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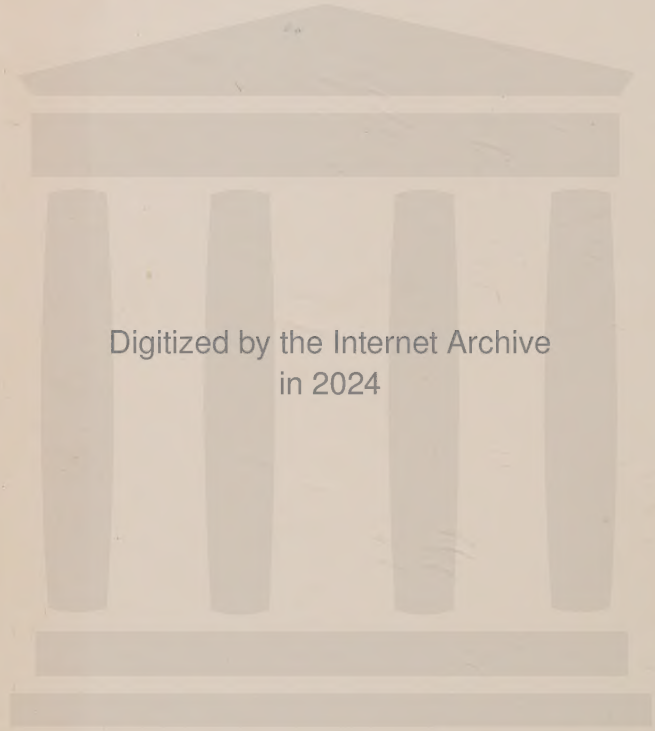
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ENGLISH

PRACTICAL BANKING.

BY

THOMAS BOUCHIER MOXON,

Fellow of the Institute of Bankers.

NINETEENTH EDITION

JOHN HEYWOOD LTD.,
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1919.

PREFACE TO THE NINETEENTH EDITION.

It is not eighteen months since the previous edition of this book was issued, a gratifying indication of its popularity.

I gratefully recognise the help which so many of my friends have given me in its revision.

I have not dealt with the Emergency (War) Regulations, as they are of a temporary character.

After a long interval the revision of the legal portion is again in the hands of Mr. Paul Bourchier-Moxon, Barrister-at-Law, late Captain, R.A.F.

THOS. B. MOXON.

Lancashire and Yorkshire Bank,
Manchester.

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ENGLISH PRACTICAL BANKING.

By THOMAS B. MOXON,

FELLOW OF THE INSTITUTE OF BANKERS.

IN writing this small treatise, which originally appeared in the *Journal of the Institute of Bankers*, it has been the endeavour of the writer to present as concisely as possible a synopsis of actual banking practice, from which all digressions, historical and theoretical, are excluded.

As banking is so much a matter of figures, it will be hardly out of place to observe, by way of introduction, that the signs for the figures which we now employ—the Arabic numerals—are not mere arbitrary symbols, but are derived from the shapes of the initial letters of the Sanscrit words for the numerals. In that language these words conveniently began each with a different letter.

Coins.

Our currency system is based upon the "sovereign," which contains 113·0016 grains of fine gold, weighs, including the alloy, 123·274 grains when of standard weight, and is a legal tender so long as it weighs not less than 122·5 grains.

Any person who chooses to take to the Mint bar gold of the value of £20,000 is entitled to have it returned to him in sovereigns, containing the exact amount of gold which he brought, but, as the Bank of England buys bar gold of standard purity or fineness at £3 17s. 9d. per ounce, in practice all bars are sold to the Bank, the loss of 1½d. per ounce being just equivalent to the loss of interest and other expenses incident on passing gold through the Mint. The

half-sovereign is exactly half of a sovereign except that its least current weight is 61·125 grains, and it, with the gold coins issued by the Australian Mints at Sydney and Melbourne, is also legal tender here. The grains referred to are, of course, troy weight, of which 5,760 make a pound troy, and 7,000 a pound avoirdupois.

Pre-Victorian gold coins are no longer legal tender.

The Coinage Act, 1891, provides that gold coins not more than three grains (whether sovereigns or half sovereigns) below the standard weight may be exchanged by the Mint at their nominal value.

The silver subsidiary coinage is based upon the shilling, whose standard weight is 87·272 grains. The bronze coins are the penny, which should weigh on issue 145·833 grains, the halfpenny 87·500 grains, and the farthing 43·750 grains. Three new pennies weigh exactly an ounce avoirdupois, and a halfpenny is exactly an inch in diameter.

Our silver and bronze coins are termed token money because they only represent certain fractions of a sovereign, and are not intrinsically worth what they represent, the country making a profit, called "Seigniorage," upon their issue. For instance, an ounce of silver, which can be bought for, say, 32d., is actually coined into 5 shillings and 1 sixpence, showing a profit of 2s. 10d. per ounce.

Gold coins are a legal tender for any amount, that is to say, may be used to discharge any debt. Silver coins are only legal tender in payment of an amount not exceeding 40s., and bronze coins in payment of an amount not exceeding 1s.

Bullion.

Remittances from abroad are sometimes made in bullion, *i.e.*, precious metal of variable fineness, in bars, dust, or "groups," that is, mixed coins, medals, and morsels of gold. These are sent to a bullion broker, who will, after assay and weighing, furnish an account sales, showing the weight, fineness, and money value of the remittance. If coin or bullion is sent by rail it should be insured for safe delivery, the policy to cover all risks until delivered into the hands of the consignee.

Bank Notes.

Currency Notes issued by the Treasury are legal tender for any amount. These notes should not be cut in halves.

Bank of England Notes are legal tender as well as our gold coins, so long as the Bank pays them in legal coin on demand, but no one is bound to give out change if the value of the notes exceeds the amount of the debt to be paid. They are not legal tender by the Bank of England or its Branches. All Bank of England notes are exchangeable at the London Office, but at a Branch change can only be demanded for notes issued thereat. They are current but not legal tender in Scotland or Ireland.

Country Bank Notes are not a legal tender, and unless received for an antecedent debt any loss arising from the failure of the issuers will rest upon the receiver, if there has been a reasonable time for him to have presented them for payment. Some country bankers when they receive them from customers stipulate that their clients shall not be discharged from responsibility for say ten days If notes are forged, the receiver can undoubtedly reclaim their amount from the person who paid them to him.

Foreign Bank Notes should be treated as foreign bills, and sold through a broker. Australian notes are expressed in sterling, but there is a heavy loss in realising them here.

Notes by Post.—Full particulars of the number, date, place of issue, and denomination of every note sent by post should be taken, and unless orders are given to the contrary they should be cut in two, and the halves sent by different mails, one letter at least being registered. If they are transmitted by the channel and in the manner indicated by a customer any loss that may arise will fall upon him.

Lost Notes.—If notes are lost, although the loser can recover them from the finder, yet if the finder has paid them away for value to any person not aware that they are lost notes, the holder has a good title to them and the original owner cannot touch him. The finder, whilst they are in his hands, has a good title against all the world except the loser. If the loser can give full particulars he may claim fresh notes for the like amount from the issuing bank on giving a satisfactory indemnity.

"Stopping" Bank Notes.—In case of notes being lost they can be "stopped" by giving full particulars to the issuing bank, who thereafter, if the notes are presented for payment, will make inquiries as to the title of the presenter. If his answers are satisfactory they are bound to pay the notes, and can only give the stopper information as to the circumstances under which they have been paid. When notes are stopped at the Bank of England the bank makes a charge of 2s. 6d. for registering the stop.

Half Notes.—It is dangerous to make advances upon half notes, as the holder may have received them under conditions which he has not fulfilled, and in that case the sender can reclaim the halves already sent.

Destroyed Notes.—The value of notes that have been partially or wholly destroyed can be recovered from the issuers, on satisfactory proof of the destruction and a full description of the notes being given. The issuers are, of course, entitled to a satisfactory guarantee in such a case. The Bank of England has its own forms for such indemnities.

Cheques.

A cheque is an order *on a banker* for the payment on demand of a stated sum of sterling money.* If the amount is described in a foreign currency a banker is not bound to pay the document, but, should he elect to do so, it is customary to convert the amount into sterling at the current rate of exchange at the place and on the day of payment.

All cheques should be drawn on the forms furnished by the banker, as a protection against forgery, and a printed order for a new book should be inserted in each book near the end, to remind the customer that he will require a new one, and to make it more difficult for one to be improperly obtained.

Type-written cheques should be discouraged; they can so easily be altered.

Number.—Cheques in books should bear a running number, the first and last numbers being noted in the Cheque Book Register, which is signed by the customer or his messenger when a new book

* See Appendix.

is issued. If a cheque should turn up under suspicious circumstances it can then be ascertained from the register out of whose book it has been obtained. Many banks post cheques to their customer's account by the number, and not by the payee's name.

Date.—If a cheque is undated, I think the Bills of Exchange Act, 1882, impliedly entitles the holder to insert what he believes to be the true date, though no alteration of a date can be allowed unless initialled by the drawer. A cheque may be dated on a Sunday, and if post-dated (*i.e.*,bearing a date after the day on which it was actually issued) it is valid even in the hands of a holder who took it knowingly, and whether it be to bearer or to order. A banker is not entitled to pay a post-dated cheque, and he cannot debit it before the day of its date to his customer's account, and meanwhile the customer may fail. On 9th August, 1895, the Supreme Court of Queensland held that "a banker is justified in paying a post-dated cheque before its date, and if by reason of the payment thereof the customer's balance becomes insufficient to pay cheques presented subsequently, which consequently are dishonoured, the banker is not liable for damages"; but this is only a local decision.

Stale Cheques.—What length of time makes a cheque out of date depends entirely on the circumstances of each individual case. A cheque which had been outstanding twelve months would certainly be refused payment on that ground, but the drawer of a cheque is not discharged from liability upon it for six years, unless he suffer loss by the delay in presentation and then only to the extent of that loss.

Drawee.—The banker upon whom a cheque is drawn is under no obligation whatever to the payee or presenter of the cheque. His contract is with his customer alone and to him only is he accountable. The Scotch law is otherwise. (See page 15.)

Bearer or Order.—Most cheques are made payable to bearer or to order, but if these words are omitted, unless there are words prohibiting transfer, the cheque (or bill, or note) is still held to be payable to order. The payee, as well as the drawer, may alter a cheque from bearer to order, but only the drawer can alter an order cheque to bearer, in which case he should sign his name to the

alteration. In this, as in all other alterations to cheques, every person who joins in the drawing of a cheque should confirm any alteration. It is not sufficient that the secretary or other official should alone do so. The Local Government Board will not allow any cheques under their control to be made payable to bearer.

Endorsements.—A banker need not pay any attention to the endorsements of a cheque to bearer, but if it is to order he must see that it is properly endorsed, and that any special endorsements upon it are duly completed, although they are in a foreign language. Endorsements in foreign characters require a banker's confirmation. A special endorsement is one in which an endorser orders payment to be made to the order of another party, who in his turn must endorse the cheque to complete the discharge. A blank endorsement is a simple signature without such an order.

An endorsement should be on the back of a cheque, but it may be upon the face.

If a cheque to order does not bear the name of the payee the drawer should endorse it; so he should if to the order of "self." If it is to the order of two or more persons, not being partners, each and all of them should endorse, but dividend warrants may be endorsed by any one of the payees. If the payee's name is wrongly spelled on the cheque, he should endorse it in the same manner, writing his usual signature beneath.

An endorsement in pencil is not illegal, but would generally be refused, as it might become illegible. An endorsement by an impressed stamp solely should be guaranteed by a banker, to prove that it had been impressed by proper hands.

Although a cheque be payable to A. B. for credit of C. D., or to A. B. of London, &c., &c., the endorsement should consist simply of the payee's name without any addition.

No titles of courtesy, such as Mr., Esquire, &c., should be given in endorsements, and a cheque to Mr. A. Brown endorsed "Mr. A. Brown" would be refused payment, though a cheque to Dr. A. Brown would be paid if endorsed "A. Brown, M.D.," and an endorsement "*per pro* Mr. Jno. Smith, A. Jones," is quite in order. Christian names need not be given in full in an endorsement; it is sufficient if the initials agree with the Christian names on the face of the

cheque. A cheque to Messrs. Brown may be endorsed "J. & J. Brown," or "Brown & Bro.," or "Brown & Son," or "Browns." A cheque to Miss Smith, now married to Mr. Jones, may be endorsed "A. Jones, *née* Smith." A cheque to Mrs. John Smith may be endorsed "M. A. Smith, wife of John Smith."

If the payee cannot write he should make his mark in presence of a witness, thus:—

his
John × Smith,
mark.
Witness, James Jones,
243, East Street, London.

A cheque in favour of a man now deceased may be endorsed by his legal representatives. Any one executor or administrator can give a good discharge, but all trustees must join in an endorsement, whether trustees under a will, a deed, or an Act of Parliament (as trustees in bankruptcy), the form being—

For J. Robinson,
J. Green, an Executor.

For self and co-executors of J. Robinson—
J. Green.

For J. Robinson,
J. Green, }
T. Brown, } Trustees.

Such endorsements are usually confirmed by a banker.

Dividend warrants must be corrected by the drawers.

A cheque payable to "cash" or order, or "rent" or order, may be treated as to bearer.

A cheque to a Company, limited or unlimited, should be endorsed "The——Co.," or "For the——Co.," or "On a/c the——Co.," or "per pro the——Co." In the first form the signer should state his official position, (though it is not absolutely necessary that he should even write his own name, if he write the name of the Company *by authority)*, in the others it is desirable, but not imperative, that he should do so, though some banks insist on it.

An endorsement "per pro The Dynamite Co., Limited, per pro J. Green, secretary, A. Brown," is not a good discharge, because the holder of a procuration usually has no power to delegate his

authority, and such an endorsement ought to be confirmed by a bank.

The signer of a procuration endorsement must give his full ordinary signature, not his bare initials.

Dividend warrants must always be signed by the actual person to whom they are payable. Procuration endorsements are not accepted on them under any circumstances.

Procuration endorsements are not accepted by Poor Law auditors, unless confirmed by a bank.

Endorsements where "for" or "pro" is prefixed instead of "p.p." are not usually accepted, though there have been legal decisions in their favour, and even the endorsement of "S.—— & Co., per S. K.—— agent," has been decided to be a good discharge to the paying banker.

Though procuration endorsements are now accepted by all the banks in the United Kingdom, there is no legal compulsion to accept them, where it is considered desirable to have a confirmation.

If an agent endorses cheques, payable to his principal, by procuration, without authority, and fraudulently places them to his own account, his bankers will be liable to refund the money they have received for such cheques, unless, perhaps, they happen to be crossed cheques when handed to the bank. (See page 61.)

In place of endorsement by the payee a banker will sometimes write on a cheque "Placed to the credit of payee with us. P.P. Central Bank, A. Gill," but, though this guarantees that the money has passed into the right hands, many banks refuse to accept such endorsements, unless prefixed by "Endorsed by order of and," &c. Cheques, however, made payable to a company for a call are usually honoured when endorsed "Received in payment of call and passed to credit of payees," the signature of the bank of course being attached.

A banker cannot demand a receipt on payment of a cheque to order, when duly endorsed.

An endorser of a cheque guarantees the genuineness of it, and also its due payment, a transferor by simple delivery without endorsement only guarantees its genuineness, but as a banker usually acts simply as collector, he can charge his customers with any

cheques returned unpaid, whether endorsed or not, so long as he has not been guilty of laches (negligence).

It is said that the guarantee of an endorsement requires a six-penny stamp. "Endorsement confirmed" would evade this liability.

All cheques should bear the endorsement or name stamp of the firm paying them to the bank, but they should not be specially endorsed to the bank. It is much preferable that the customer should simply cross them with a stamp thus, "Ionian Bank a/c Green & Co.," and the bank will again, if necessary, cross them to their collecting agents.

The addition "a/c, Green & Co.," has no legal warrant, though few bankers would care to dispute their liability for loss arising through their neglect to attend to the instruction.

Though the paying banker is absolved, should the apparently correct endorsement of a cheque prove to be a forgery, the banker who collected the cheque may be required to repay the money, unless the cheque were already crossed when it came into his hands, and were collected for a regular customer, not for a casual one.* Under any circumstance the person for whom he collected the money would be called upon to repay it. (See page 61.)†

Amount to be Paid.—When words and figures differ, the banker may pay the amount in words, but usually such a cheque is returned with answer, "words and figures differ." Where it is clear what amount is intended to be paid, a cheque should not be returned because of a trivial omission, thus, twenty one four shillings and six pence should be paid as £21. 4s. 6d. Customers are often careless in filling up cheques, and by the use of pale ink, by disconnected words, by slovenly writing, and by the issue of cheques to unknown individuals, offer facilities for fraud that unfortunately too often cause loss to the banker instead of to the customer.‡ Perhaps the easiest amount to alter is eight pounds, which by the insertion of "y" in the words and "0" in the figures is converted into £80. The use of punches, "Under Ten Pounds," "Under Fifty Pounds," &c., &c., materially spoils the field for the forger. Where a cheque has to be

* One transaction does not make "a customer."

† See Clark *v.* London and County Bank. Law Times, 1897, page 293.

‡ But see London J.S. Bank *v.* Macmillan, House of Lords, 21st June, 1918.

drawn for the balance of an account, and the amount of interest is unknown, it should be filled up "the balance of my account, *Twenty* pounds and accrued interest," leaving the figure space blank for the banker to fill in the correct amount.

If the amount of a cheque has been altered a *bonâ fide* holder has a right to the original amount of the cheque.

Drawer.—A cheque should be signed to correspond exactly with the specimen signature in the banker's signature book, which need not give the Christian name in full. It is not, however, essential that in any banking document the signature should be at the end of it. "I, John Jones, request" is perfectly good, if you can identify the writing as that of your customer, but all variations from the usual form should be discouraged, and a banker is entitled to return a cheque signed in an unusual manner.

Companies' cheques should clearly set forth that they are drawn for the Company, but a cheque for a Limited Company may be drawn in the name of the Company simply, thus, "The Borneo Tea Co. Limited"—without any personal signature—by a person duly authorised. (See also page 7.)

A cheque drawn by an illiterate drawer should be witnessed in the same way as an endorsement by mark. Such cheques should always be signed at the bank, and, if possible, the witness should not be a bank official, certainly not the paying teller.

In case of sickness, the doctor should give a certificate that the customer is unable to write, but is of clear and understanding mind; and he and some other respectable person should witness the mark. It may be an advantage to obtain a receipt on the cheque from the person to whom the money is paid.

If a customer is partially under the influence of alcohol, it is desirable, when possible, to have a witness to the signature of the cheque and the payment of the money.

Forged Signatures.—A forged cheque cannot, of course, be charged to a customer; but if the forgery is discovered the day the cheque is paid, and before the position of the person to whom it has been paid is altered, probably the money may be recovered from him, but after the day of payment there is no recourse against him.

If a forged cheque comes forward, it is well to telegraph at once to the banker through whom it is presented, so as to nip the fraud in the bud.

Stamps.—Cheques, for however small an amount they may be, must be stamped, either with impressed stamps or postage or receipt stamps. If unstamped when presented for payment, the banker can stamp them and deduct the cost from the amount to be paid, or charge it to his customer. Cheques drawn abroad may bear an impressed stamp.

Cheques issued by industrial societies, building societies, and rural sanitary authorities require to be stamped, but those of poor-law guardians and Government departments are exempt. Cheques of friendly societies are exempt (Inland Revenue Circular, Nov. 10, 1894); also those of a Registrar of a County Court on his public account. Cheques and bills drawn by any officer of a public department upon any account used only for public money, are also exempt.

A receipt on a stamped cheque for £2 or above requires a receipt stamp.

Crossed Cheques.—The crossed cheque is originally peculiar to the United Kingdom, but is now recognised in France. It is a cheque crossed on its face by two parallel transverse lines, with or without the words "and Company," "Not negotiable," "Under —— pounds," or the name of a banker without the parallel lines. The effect of the crossing is that the banker upon whom the cheque is drawn is required to pay it only to some other banker, or, if a particular bank is specified in the crossing, then only to that bank. Any holder may cross a cheque or convert a general crossing into a special crossing. If a cheque is crossed by two banks, unless it is clear that one of the two is acting as agent for the other, payment should be refused. In practice such cheques are paid against an indemnity from the bank that receives the proceeds. To cancel a crossing, the drawer, and he only, may write across the cheque "Pay cash," adding his full signature, but this practice should be strongly discouraged.

"Not Negotiable" Cheques.—A *crossed* cheque bearing these words warns all holders that if there is any flaw in the title to it

the rightful owner may recover from whomsoever obtains cash for it. The bank that collects such a cheque for a customer is protected, unless negligent, though his customer may have to refund.* The paying bank incurs no special liability on these cheques.

Presentment for Payment.—No delay should be made in sending forward cheques for payment, especially if they are to go through the Country Clearing. Legally, until the close of the first business day after the day of receipt is allowed to present them or send them forward, if they are sent direct, but if delayed longer any loss incurred will fall upon the person responsible for the delay. In practice, all cheques which have to be sent by post are forwarded on the very day on which they are received. If it is desired to know early whether a cheque is paid or not, it should be sent direct to the drawees with request to them to advise its "fate." If a telegram is requested, only if unpaid, it is difficult to make sure of its payment until the close of the day, and hardly then. No cheques presented through the London Clearing House are absolutely paid until the end of the day, and the clearing London banks invariably present all cheques through this channel, therefore a London cheque should be sent through some non-clearing correspondent if early advice of its fate is required.

Cheques for large amounts, particularly if received from weak customers, or issued by weak drawers, may often advantageously be sent direct to the drawees for payment to agents in London. Such remittances should be attended to on the day of receipt, for though legally they may be retained until the day following, the remitting bank should advise its customer if it does not receive advice of payment in course of post. As a banker has no right to debit his customer with a cheque before the day he pays it, no matter when it is drawn, he incurs no loss by paying it over at once, and the courtesy of bankers to each other requires this prompt attention, which is rarely neglected.

Payment Stopped.—The drawer of a cheque is the proper person to stop payment of it, and should any other person apply to do so, he should be required to obtain the requisite order from the drawer, though of course meanwhile care should be exercised not to pay

* See Cramplin *v.* L. J. S. Bank, *Times*, 15th Nov. 1913.

the cheque, should it be presented, until it is ascertained that the presenter is entitled thereto. After orders are received from the drawer not to pay, the loss will fall upon the banker if he should pay it. He should therefore promptly advise every office where that particular customer's cheques are payable of the stop. He is not bound to act on an unauthenticated telegram.

A strong argument against paying cheques out of hours is that if by doing so the drawer is deprived of the opportunity of stopping payment of a cheque, and thereby he incurs loss, the banker may be held liable to recoup him. Although no responsibility to the holder of a stopped cheque devolves upon the banker on whom it is drawn, yet if it is out of the hands of the payee when the payment is stopped, and is not tainted with forgery, any holder for value can sue the drawer upon it, unless it is a "not negotiable" cheque.

The Bankruptcy Act, 1914, Section 45, renders payments to a bankrupt valid if made before the Receiving Order and if the payer has no notice of any act of Bankruptcy before payment.

Drawer Dead.—After a banker hears of the death of a customer, he must not pay his cheques, but return them marked "drawer deceased." Any cheques paid after his death, but before notice of it is received, are in order, and can be debited as usual. This regulation only refers to personal accounts, or where the deceased is sole partner in the firm. The death of a partner does not stop payment of cheques signed by him in the firm's name, but his estate is not liable for payments made by the banker after notice of death. The death of a treasurer does not affect cheques drawn by him officially.

Donatio Mortis Causâ.—Though a cheque delivered but not cashed before the death of the drawer cannot be cashed by the banker after notice of his death, yet if the recipient has endorsed it over to a third party for valuable consideration before, or without notice of, the death, it is a completed gift, and the executors will have to pay it.

A cheque, promissory note, or bill in favour of B, but not endorsed, and given by him during his last illness to his son, will pass to the son as *donatio mortis causâ.*

Act of Bankruptcy.—As soon as a banker knows that his customer has committed an act of bankruptcy he must cease to pay his cheques, but it must be an actual act of bankruptcy. Thus, if the customer says, that unless he receives help, he must stop payment, that is not enough in law to make an "act of bankruptcy," though after such a remark the banker would, of course, take care not to let him overdraw or increase his liabilities to the bank. If the notice is not direct from the customer or someone acting for him, it will be well to send to his place of business and obtain confirmation of the rumour before dishonouring his cheques.

A verbal statement that the speaker is unable to pay his debts in full is not an act of bankruptcy under the Act of 1914, unless made formally and deliberately, but the House of Lords (7th July, 1891) declared a circular "being unable to meet my engagements" to be an act of bankruptcy.

Payment.—Having seen that the details of the cheque are in order, and that the cheque is not stopped, and the drawer is not dead, and has not failed, the cashier may proceed to payment, subject to the state of the drawer's account. Great care must be taken to make sure that everything is credited before a cheque is dishonoured on the ground of want of funds, for a banker will certainly be mulcted in damages, should he improperly refuse payment, and so damage his customer's credit.

If it has been the custom to pay cheques against securities, the privilege must not be withdrawn without first advising the customer, see Rouse *v.* Bradford Banking Co., 1894, A.C. 586. If there are sufficient funds, irrespective of interest and charges, these charges should not be debited at an unusual time, without notice, and then a cheque dishonoured for want of funds, but it is thought a cheque may be returned with answer, "effects not cleared," though previously the customer has been permitted to draw against cheques, &c., paid to credit, before they have been encashed.* If a banker holds a cheque over instead of returning it, and the drawer pays in to his credit enough to cover it, the banker is bound to pay the cheque, irrespective of the state of the

* There is some doubt as to this

drawer's account. Instead of holding a cheque over and advising the remitter, it is wiser to return the cheque at once, and to recall it by telegraph when in a position to pay it. (See also page 48—"Credits in Account.")

If the total amount of the cheques presented exceeds the available funds of the drawer in his banker's hands, usually those cheques would be paid which are within the available amount, but in a similar case the Bank of England returned all the cheques presented.

When a cheque is returned for want of funds, the best answer to give is "Refer to drawer" (or "R/D"), but if the answer is "Not sufficient funds" (or "N/S"), on no account should the amount of the deficiency be stated. After a cheque has been refused which exceeded the customer's balance, smaller cheques may still be paid when presented. In Scotland, however, it is not so; presentment of a cheque there establishing a lien on the balance in the banker's hands in favour of the holder of the cheque.

When payment of a cheque is refused on technical grounds, it is desirable to express them so clearly that no imputation can be cast upon the credit of the drawer, and therefore it is often desirable to add to the answer, "will pay on banker's indemnity." If a cheque can conveniently be sent to a customer for the correction of a technical flaw it is much better to do so, rather than to return it unpaid.

If a cheque has been cancelled in error, the cancellation may be annulled by writing under it "cancelled in error," with the signature of the canceller. In some foreign countries this is not permitted.

If a cheque is presented with a bill attached to it, but to which it makes no reference, a banker is not entitled to refuse the cheque because of any irregularity in the bill, but it is otherwise if the cheque refers to the bill.

Legally, if B pays to his credit with X a cheque drawn upon X by A, and X receives it without remark, X may return it unpaid to B's debit the day after receipt, but in this, as in many other cases, it is well not to rely upon legal rights too strongly, for such action would tend to discredit a bank in the eyes of the public. It is not

reasonable that B should occupy a worse position through being a customer than if he had been a stranger.

A cheque is paid so soon as the money is passed across the counter, and a banker has no legal right to demand it back again. The payment dates from the actual day of payment, not from the date of the cheque, and the interest account should be calculated accordingly; a cheque paid by an agent under standing orders should be charged, as to interest, from day of payment, not from day of receipt by the drawer's bankers.

Mutilated Cheque.—If a cheque bears evidence of having been torn, as though to cancel it, payment should be refused. If it has been cut or torn in two, it is usually returned, unless endorsed in some such form as "Accidentally mutilated by us," followed by a banker's signature.

Dishonoured Cheque.—For whatever cause a cheque is dishonoured notice should immediately be given to the customer from whom it has been received, if it is not actually returned to him. If it is desirable to retain a hold on the drawer, notice should be given to him also, without delay, on a similar form to that used for dishonoured bills.

If a banker has to return a cheque, he should send it back to the bank or person from whom he received it, unless it comes through the London Clearing House, when it should be sent to the bank who, from the crossing, appear to have sent it to be cleared, not to their London agents.

Even if a dishonoured cheque is reclaimed by the bank on whom it is drawn, the banker to whom it was returned should let his customer know of the return, as it is an indication of the weakness of the drawer, which the customer should be made aware of.

If a dishonoured cheque bears foreign endorsements it may be desirable to treat it like a bill and have it protested, but this will depend upon the instructions given by the customer when paying it in. If any delay is occasioned by obtaining protest, notice of the dishonour should be given at once, without waiting for the documents. If a cheque is dishonoured and paid on re-presentation, commission upon it cannot be claimed from the paying banker.

Cashing Cheques.—If cheques on other offices or banks are cashed against standing orders, they fall under the rules for the payment of cheques; but if cashed without authority from the bank on whom they are drawn, the presenter, who should endorse the cheques, is liable if the cheques are returned. If a cheque is cashed for a stranger, it is much safer to take a bearer cheque, or one payable to the Cashing Bank, because if it is paid by the banker on whom drawn, though it should afterwards prove to be a forgery, if he does not give notice of the forgery on the day he paid the cheque, he cannot recover the money from the banker to whom he paid it, though the latter would be liable on a forged endorsement.

A cheque may be accepted, but it is not desirable for a bank to encourage this practice, known in America as the "certification of cheques."

All paid cheques should be visibly cancelled before they are put away or given up. This is often done by punching a hole in them.

Paid cheques are the legal property of the drawer, but the paying banker is entitled to an acknowledgment that they are correct, and correctly charged to the customer's debit, before he parts with them.

Lost Cheques.—If the payee selects the channel through which the remittance is made, or the ordinary means of communication are made use of, the loss falls upon him,* and he must find the indemnity requisite before a new cheque is issued. On a satisfactory indemnity being offered he can insist upon a new cheque being given to him.

When a cheque is lost the loser should at once advise all who are parties to it, get payment stopped by drawer, and advertise the loss, but if no forgery is requisite to enable the cheque to be cashed, any person who takes it honestly and for value can compel the drawer, not the banker on whom drawn, to pay it, if it is not "not negotiable." The drawer must in such a case recover upon the indemnity if he has issued a duplicate.

* A legal decision given a few years ago demonstrates the desirability of obtaining specific orders to remit by the post.

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Cash Orders.

These are inland drafts on demand, drawn by traders on traders (therein differing from cheques). Generally they are subject to the laws of bills of exchange.

They should be presented for payment within the business hours of the drawee, and the presenter may insist upon being paid in legal tender, though it is usual to accept silver, if sent by the drawee to the bank. If the collecting clerk has permission, he may give the order up in exchange for the drawee's cheque, or the order may be held till the cheque is paid, or it may be attached to the cheque. A cheque given for a cash order has this advantage, the holder can sue the drawer of it, though he could not sue him as drawee of the cash order. If the order is not paid on presentation a notice is usually left describing it, and requesting payment to be made at the bank that same day before the close of the bank's business hours. If the order is not taken up by the close of the business day following the day on which the order was presented for payment, it is returned to the remitter with answer "Notice left." Part payment should not be accepted unless authorised by remitter.

Cash orders are not noted, being usually inland documents. If they are foreign drawn they are treated in all respects as bills of exchange.

Some banks object to collecting cash orders, and either make a heavy charge upon them or refuse to receive them at all.

The acknowledgment of receipt of a cash order must not be accepted as an indication that it has been paid, though if it is held over unpaid it is much the better plan to say so in the acknowledgment. Sometimes a customer gives standing instructions to pay orders drawn upon him by specified individuals, but it is well to require advice from him of each order, so as to lessen the risk of paying a forgery, the loss on which would fall upon the banker.

Postal Orders and Postal Notes.

Wherever these are made payable they can all be actually cashed at the General Office in London, and also in some of the larger cities. A banker is not required to give the name of the remitter,

but on the other hand a banker has been called upon to repay a Post Office Order six weeks after he received cash for it, and he cannot receive payment of crossed Postal Notes until they have been examined at the General Office, unless he signs a special undertaking.

Postal Orders are not "negotiable instruments," therefore if they have been purloined the holder can give no title to them. Neither are they legal tender.

Bills of Exchange and Promissory Notes.

These form a very important part of a banker's assets, and it requires considerable discrimination to discern what bills are based upon proper mercantile transactions, what are practically mortgages upon inconvertible property, and what are simply accommodation bills though called by a much less offensive name. Bills drawn by merchants on manufacturers, by manufacturers on wholesale dealers, and by wholesale dealers on retailers, are regular and proper in most trades, though it is necessary to know the customs of each trade before its bills can be criticised Accommodation bills, created simply to assist one of the parties thereto, can often be detected by a consideration of the business relations of the two parties, but only experience can teach the manifold phases which bills of this character assume.

Inland Bills are those both drawn and payable within the British Isles, or drawn within them upon some person resident therein. The British Isles are Great Britain and Ireland, the Islands of Man, Guernsey, Jersey, Alderney, and Sark, and the islands adjacent thereto, being part of the King's Dominions. Such bills are generally "sola" bills, that is to say, are represented by only one document, not by duplicate or triplicate documents, called a "set," as in the case of foreign bills.

As far as regards the revenue stamp on bills, the Channel Islands and the Isle of Man are considered "foreign" places.

Alterations.—Any material alteration in a bill, whether it be in the date, the currency, or the amount, should be initialled by *all* the parties to the bill.

The Date.—A bill should be dated. If it is not, any lawful holder may put in what he believes to be the true date, but the acceptor should be advised of the date inserted, so that he may rightly calculate when the bill falls due if it is payable after date.

A bill may bear date prior to or subsequent to the day on which it was actually made, or to the date of the impressed stamp, and it may be dated on Sunday.

The Currency of a bill is the period of time which must elapse before it is due. If the period is expressed in months, calendar months are meant, and the three days' grace are added at the end of the term. Thus, a bill at three months' date, dated 28th November, would complete the three months on the 28th February, and the three days' grace would make it due 3rd March, unless, being leap-year, February had 29 days, when it would be due 2nd March. In calculating the months no allowance is made for lacking days, so a bill at three months' date from 30th November would complete its three months at the end of February, the 28th or 29th, as the case might be, and would consequently still fall due on the 3rd March.

Bank post bills issued by the Bank of England (and Treasury bills) take no grace. All other bills, even those drawn upon that bank by its correspondents, follow the rule and take three days, even if drawn payable on a stated date.* Days of grace are alike granted upon bills of exchange and promissory notes. If they are payable by instalments grace is allowed on each instalment. Bills are always described as due on the third day of grace, even if it falls on a holiday or a Sunday. If in the above case 3rd March were a Sunday, to describe the bill as due 2nd March would probably cause its dishonour, although actually it would be presented and paid on that day. Some Russian and other Eastern-drawn bills are dated according to the old style, to which 13 days must be added before the computation of maturity, to bring the date into accord with the Gregorian calendar.—See Foreign Bills.

At Sight drafts are payable on demand, and take no grace.

* Unless drawn thus "On 3rd Feb., 1893, *fixed*."

After Sight Drafts.—The currency is reckoned from the date on which the bill was left with the drawee. If it has been noted or protested for non-acceptance, the period is calculated from the date of noting, and anyone intervening for honour must calculate the currency from that date, not from the date of his intervention.

Date of Payment.—If a bill falls due on Sunday, Christmas Day, Good Friday, or on a public fast or thanksgiving, or on a holiday, not being a "bank holiday," appointed by royal proclamation, it must actually be presented and paid on the previous business day, but if it falls due on a *bank holiday* it must be presented and paid on the business day next after the holiday.

When a bill falls due on a Sunday, and the Saturday is a Bank Holiday, the bill is actually payable on the Monday following.

When Christmas Day falls on Saturday, bills maturing on the following Sunday are payable on the preceding Friday in England, but apparently on the following Monday in Scotland.

Bank Holidays in England and Ireland are Easter Monday, Whitsun Monday, the first Monday in August, and the 26th of December, or, if that is a Sunday, then the 27th December. In Scotland they are: New Year's Day (or, if this falls on Sunday, then the following Monday), and the first Monday in May and August. Christmas Day and Good Friday are now Common Law Holidays in Scotland.

Overdue Bills.—If bills are overdue the holder cannot acquire or give a better title than the person had from whom he received them.

Amount.—The words in the body of a bill or note fix the amount of the bill, the figures are but a memorandum. If they differ, the customer and the acceptor should be advised of the correct amount, as given in words, and it should be marked over the figures. It is better, however, to return such bills for correction.

Value Received, or similar words, need not be inserted in an inland bill, but are requisite in a foreign one. Reference to particular securities or goods described by their marks does not give the holder of the bill any lien on them, unless he has the actual documents of title.

Foreign Money.—If the amount of a bill payable in England is specified in foreign money, the sum to be paid is calculated at the rate of exchange for demand drafts, at the place where the bill is payable on the day it is due, unless the bill is drawn "Exchange as per endorsement," or some other indication is given in the document of the amount to be paid in sterling.

Drawer.—The drawer guarantees by drawing that the bill will be duly accepted and paid at maturity. If he is a minor, although the holder has no recourse against him, he may derive through him a right of action against the acceptor of the bill (and all other parties to the bill), and similarly if the drawer be a company or corporation who acted *ultra vires* in drawing the bill.

If drawn by a company, the name must be correctly stated and the bill signed "for" the company, or the signers are personally liable. (See also pages 7 and 10.)

Acceptance.—Until a bill is accepted no one except the drawer has any claim whatever upon the drawee.* Before sending out a bill for acceptance a banker should, if the bill is his own, make it specially payable to himself, or to the agent through whom he will send it for payment. Although a bill be unaccepted, if it be a bill from abroad, it may have an indication anywhere about it, indicating that another part of the "set" is accepted and in the hands of a specified person; often expressed "First and in need with Messrs. ——." The advantage of this plan is that earlier acceptance is obtained, with its additional security. In such a case the banker will exhibit the "part" he holds to the person indicated as the holder of the accepted part, applying for it, and the holder is required to hand over the acceptance if the two parts agree; probably there may be no endorsements upon the accepted part, or only a portion of the series of endorsements which are on the other, but if as far as they go the two parts agree, they are fastened together and form one bill.

No time should be lost in presenting a bill for acceptance. Unreasonable delay would, in case of the failure of the drawee, discharge the endorsers, if the bill is drawn "after sight," and every

* Therefore beware of bills drawn "unacceptable."

day's delay postpones the day for payment of the bill. Bills should be sent out for acceptance at latest on the business day next following the day of receipt. In London, bills after date having more than three days to run are presented for acceptance.

The bill must be tendered to the drawee for acceptance; he is not required to call to see it. It can be sent by post, but if the holder does not care to trust the drawee with it, and he resides at a distance and is asked to call, the person from whom it has been received should be promptly advised of the course adopted. If it be sent by post, either direct to drawee or to a bank, a stamped envelope should be enclosed for its return, unless the bank to whom it is sent is a recognised agent of the sender. Presentation should be during the usual business hours of the drawee, and he is not required to date his acceptance from the actual day on which the bill was left, if left after such hours. He is not required to accept it at once, but is entitled to have until the close of the following business day to decide upon the course he will adopt. If, however, when the bill is tendered he chooses to give an answer at once, the presenter need not wait until the following day before dealing further with the bill.

If the bill has documents attached to it, they should be exhibited with the bill for examination (both bills of lading and insurance policy, &c.), but the drawee cannot demand that these should be left with him, and it is not customary to do so unless the drawee be a banker. If documents are so left, and the drawee wrongfully retains them, he commits a criminal offence. When documents are attached to a bill, there should be a ticket stating whether the instructions are to deliver "Documents on payment," or "Documents on acceptance." If the holder sends the bill by post for acceptance, he should repeat these instructions, and any other, such as "protest if not accepted," or "incur no expense," &c., &c., in the letter. These instructions should be strictly attended to in all bills received to procure acceptance of, because any neglect of them may involve the party guilty of negligence in liability on the bill. It is customary when presenting bills for acceptance to attach a ticket, "Left for acceptance by of 17th February,

1904." In the country towns it is advisable to add "to whom *only* the bill must be returned," and, if the bill entitles you to say it, "to be accepted payable in London."

If the bills are on demand, payable elsewhere than at the residence of the drawee, an endeavour should be made to recover them before the close of business hours on the day on which they are presented for acceptance.

If a bill is drawn payable at any other place than the drawee's residence or place of business, it must be presented to him for acceptance before it is sent for payment, even though this will prevent the bill arriving at the town where it has to be paid until after the due date, but in such a case notice of the circumstance should be sent to the remitter, particularly if the bill has foreign endorsements.* If the drawee is dead, an attempt should be made to find out his personal representatives, and to present the bill to them; if they are not known, it should be presented at his last residence. If he is bankrupt, the bill may be presented to him or his trustee. If there are several drawees, the bill should be presented to each of them if they are not in partnership.

Acceptance is signified by the signature of the drawee upon the bill (even on the back), and that in English law is sufficient, without any addition. If the bill is after sight, the date of sighting must be added. If the bill does not specify where the bill is to be made payable, the acceptor is not entitled to make it payable out of the town in which he resides, unless perhaps in London, according to custom, and nothing must be added to his acceptance to indicate where it is to be paid, without his sanction.

Acceptances for a company should set forth clearly that they are accepted for the company.

The acceptance can be given before the bill is signed by the drawer, or whilst it is otherwise incomplete. If instead of accepting a bill the drawee gives a cheque (not requiring endorsement), and bearing the due date of the bill, this is not an acceptance within the terms of the Act of 1882, and the endorsers should be advised thereof and their approval obtained.

* See Appendix. Domiciled Bills.

The drawee of a bill must be very careful not to accept more than one part when the bill is drawn in a set ("first, second, and third of exchange"), for if he accepts two parts he may have to pay both of them.

The drawee will be careful not to accept any draft drawn under a per procuration which is not known by him to be authorised by his correspondent.

The acceptor may cancel his acceptance so long as it remains in his own hands, provided he has not declared his intention to accept, and thereby caused a third party to rely on the bill. After he has delivered the acceptance he must not revoke it, nor can he thereafter dispute the drawer's signature. If he has been induced to accept the bill by fraud, he, of course, can repudiate liability on the bill, but not simply because the consideration for which he gave the acceptance has failed, if the bill is in the hands of a *bonâ fide* holder for value, as, for instance, where the bills of lading attached to the bill turn out to be forgeries.*

An acceptance is termed "general" if it consists simply of a signature, or of a signature and an indication of the place of payment, *without* the addition of the words, "and there only and not elsewhere," or their equivalent. These words would make it a "qualified" acceptance.

A general, or "clean" acceptance, enables the holder to present the bill at maturity to the acceptor himself, without presenting it at the indicated place of payment (domicile); but by doing so, though he would retain his recourse against the acceptor, he would release all the endorsers. A qualified or conditional acceptance is sometimes tendered, particularly in the case of bills with documents attached which are to be given up on payment. It seems natural that the acceptor should embody this stipulation in his acceptance, but if the holder accepts such a qualification without the authority of the prior parties to the bill they are relieved from liability on it. It is said that if, in place of noting this qualification on the bill, a "back letter" be given, undertaking in consideration of the acceptance to give up the documents on payment, the prior parties are equally released. In the Indian trade, however, such qualified

* See Guaranty Trust Co. *v.* Hannay, Court of Appeal, 7th July, 1918.

acceptances are recognised by the custom of merchants. In any case of qualification a banker will, of course, notify his customer and obtain his instructions or confirmation, meanwhile stating that he only receives the bill without prejudice to any interests therein.

If a documentary bill is sent out or received for acceptance precise instructions should be attached, indicating whether the documents may be given up on acceptance or on payment, whether insurance policy or certificate is annexed or is required, and whether it must be stamped with the English Revenue Stamp. If the Insurance Certificate refers to an open policy, and the bill is held for collection, application should be made to the Insurance Company or broker issuing the policy, for confirmation. If an acceptor of a documentary bill who is not entitled to the documents on acceptance desire to obtain them, by merchants' custom he is allowed to have them on payment of the amount of the bill under rebate (or discount) at one half per cent above the advertised rate for short deposits with the chief London Joint Stock Banks. The rebate should be calculated from the day upon which the actual cash will be obtained by the owner of the bill at the place where it is payable, not from the date upon which he will receive the draft for the amount, and he is entitled to this payment free of any charge for commission or exchange. A bill taken up under rebate should be duly stamped and discharged. Sometimes documents are obtained by a banker intervening on behalf of the acceptor and guaranteeing the due payment of the bill at maturity, which, by the by, was a few years ago declared *ultra vires* in a case where the bank had no power by its memorandum to guarantee, though had the bank simply endorsed the bill no question of capacity could have arisen. Sometimes the documents are surrendered to a broker on his undertaking to pay over the whole of the net proceeds of the produce or absolutely to pay the bill at maturity, but whoever applies for the documents should produce an order from the drawee of the bill, authorising the delivery of the documents to the applicant or to his order. If a documentary bill is taken it is desirable that the bills of lading, &c., should be endorsed in blank, and not specially, so as to avoid any question as to the personal

liability of the holder, not being actual owner of the goods, for freight.

Bills of Lading only *purport* to be for certain articles, and may turn out to represent rubbish, therefore they should only be relied upon when received from strictly honourable people. The freight and customs' duties may prove so heavy that if the goods are thrown on the hands of the holder of the bill they may realise but a trivial amount compared with their apparent value when shipped. (See pages 104 and 105.)

The drawee is the person who himself or by his agent should accept the bill, and if his name and address are inaccurately given on the bill they may be corrected. Acceptances by minors are invalid. Acceptances by a partner in a non-trading partnership, such as a firm of doctors or lawyers, do not bind the firm, but only the individual signer. Per procuration acceptances only bind the drawee to the extent of the authority he has given the signer.

Two distinct firms, having one or two partners in common, and trading under the same style, are liable on each other's acceptances to a *bonâ fide* holder without notice, and directors of a company which has no power to accept bills are themselves personally liable on their acceptances purporting to be on behalf of the company, to a holder for value who is unaware of the incapacity of the company to accept.

After Sight Bills.—The acceptance should bear the date of the day on which the bill was first left with the drawee, not that of the day on which the acceptance is written on the bill. If accepted thus, "Sighted 20th December, accepted 21st December," the currency must be calculated from the sighting date. After sight bills must be presented for acceptance within a reasonable time or prior endorsers to the bills are discharged. If the sighting date has been omitted, any holder may insert the true date of sighting.

Partial Acceptance.—If a bill is accepted for a less amount than that for which it is drawn, the holder must, without delay, get the approval of the person from whom he received it or reject the bill. If it is a foreign bill it must be protested for the unaccepted balance.

Acceptance for Honour.—If a bill is refused acceptance by the drawee, or if it is protested "for better security" after his acceptance and subsequent failure it may be protested for honour. After protest it should be presented to any "case of need" named on it, and if the case of need intervenes he should accept thus—

"Accepted for honour and account of A. B. & Co. (drawer or endorser), with £ : s. d. Notarial Charges, and will be paid if regularly presented when due. N. Y. & Co."

Application for Accepted Bills.—On the day following that on which the bill has been left for acceptance, it should be applied for and described by its amount, the applicant also giving the name of the presenter. If the presenter by negligence allows these particulars to become known, so as to enable a stranger to apply for the bill, the loss falls upon the presenter. On receiving it the applicant will see, before leaving the acceptor's office, whether the acceptance is regular and completed. If there is any delay in recovering the bill, notice should at once be given to the person from whom the banker received it.

Non-Acceptance.—Bills refused acceptance should be promptly returned to the owner. An inland bill does not require noting or protesting, but a foreign bill should always be protested unless the holder is instructed to the contrary. A form of protest for use where no notary is available is given in the section on non-payment. Sometimes it is convenient simply to note a bill and obtain the owner's instructions before incurring the greater expense of protesting, for if a bill be duly noted a protest can be extended at any time.

In the United Kingdom the holder is entitled to recover the amount of an unaccepted bill at once from the prior parties, and so he is in the United States, but elsewhere he can only demand better security for payment at maturity. Bills drawn upon the United Kingdom are, of course, subject to its laws in this matter so far as concerns residents therein.

Unauthorised Draft.—A depositor cannot insist upon a banker accepting an undue draft against his deposit, without his prior consent.

Failed Acceptors.—A banker cannot compel his customer by law to withdraw the acceptances of a failed firm before maturity, but some bankers nevertheless require them to be taken out of their hands upon the announcement of the failure.

Endorsements.—In the United Kingdom a bill may be to bearer or order. If to order, of course it must be endorsed. If only drawn payable to a specified individual, without the words, "or order" or "or bearer," it is treated as payable to order, unless there is a clear indication that it is not to be transferred. It may be endorsed on the face. The endorsement should agree letter for letter with name given as payee or indorsee on the bill. If it is wrongly given, the endorser should write it in the same manner, and add his proper signature under.

All bills paid to credit should be endorsed by the customer to whose credit they are to be passed, but if a banker has received unendorsed bills, for good consideration, he can compel endorsement by his customer or by his trustee in bankruptcy. It is desirable that the same partner should draw and endorse bills, as it assists the paying banker, who would be liable to his customer if he paid a forged endorsement or refused a valid one. If the endorsement is per procuration the banker may require proof of authority to endorse, though this is not usual.

If a banker pays a bill on a forged endorsement he cannot reclaim the amount from a *bonâ fide* holder after such an interval of time that the position of the holder may have been altered. If a bill is payable to several persons, not partners, each one of them must endorse. A minor may endorse so as to transfer a good title, though he will not be liable on the bill himself. An executor or trustee may endorse, but usually such endorsements are confirmed by his bankers.

A forged endorsement, or an unauthorised one, is inoperative, and gives the holder of the bill no right to retain or to deal with it.

A bill with a restrictive endorsement should not be taken—"Pay A. B. for my account" is such an endorsement. The payer of a bill with such an endorsement is not responsible for the correct

application of the proceeds. An endorsement as surety must be *beneath* the endorsements it guarantees, and a note from the endorser stating in what capacity he endorses is advantageous.

An endorser "without recourse" (*sans recours*) is liable on any previous forgeries, though not for failure of payment of the bill.

An endorser, or any other party to a bill to whom it is endorsed back again, cannot sue any of the intermediate parties.

A bankrupt endorser gives a good title to a person taking the bill in good faith, without notice and for value.

Bills remitted for collection should not be specially endorsed, but any specialty should be completed by an endorsement in blank and the remitter's stamp on the back. "Remitted from B. bank to C. bank for collection."

Revenue Stamp.—All bills drawn in the United Kingdom must be drawn on stamped paper. If drawn abroad the proper *adhesive* stamps must be affixed when the bill is put into circulation (they need not be on when the bill is accepted), and should be cancelled by the name or initials of the firm affixing them, with the true date of so doing. Penalty for not thus cancelling them is £10.

Bills drawn in the Channel Islands and in the Isle of Man are foreign bills" as far as the Stamp Act is concerned only.

If the bill is in a set, a stamp for the full duty should be affixed to one of the parts. A bill drawn abroad upon an English *impressed* stamp does not satisfy the law; the stamp, if the bill is not on demand, must be an adhesive one. Foreign drawn bills on demand or within three days after sight or date require an *inland* revenue, not a foreign bill stamp.

If the bill is in foreign currency, its amount, for purposes of the Stamp Act, is calculated at the rate of exchange on the day of its date unless fixed in the bill.

Occasionally a bill is received from abroad, duly accepted, but purporting to be drawn in the United Kingdom upon unstamped paper; in such a case a copy of the bill may be drawn upon a properly stamped form, and attached to the acceptance after being duly signed by the drawer of the bill. This is a practical way out of the difficulty, though its legality may be questioned.

Unless it is desirable to secure right of action in foreign courts, it is not necessary to give attention to the foreign stamp. If the bill is payable with interest, the stamp need only cover the amount of principal.

No stamp duty shall be chargeable upon a bill of exchange drawn in the United Kingdom for the sole purpose of remitting money to be placed to any account of public revenue. Customs and Inland Revenue Act, 1890.

Spoiled Stamps may be recovered within two years from their date, if the bills have not been accepted or presented for acceptance. Fuller information will be found in the Banker's Almanac, or can be obtained from any stamp distributor.

The stamp cannot be impressed upon inland bills after they are made, nor can a stamp of insufficient value be supplemented. A fresh bill must be drawn.

Presentation for Payment.—On the day a bill matures it should, without fail, be presented for payment at the place indicated in the acceptance, even if the holders have met the acceptor elsewhere, or if he has said, before maturity, that he will not pay it, or if he has failed, or is dead. It need not be to the acceptor himself, if presented at his office or house to anyone apparently in a position to give an answer, and it must be tendered within his usual business hours. The bill itself should be actually presented; the acceptor is not bound to send down for it. If it is not presented on the due date, though the endorsers are discharged, he is still liable upon the bill, subject to relief for any loss accruing to him in consequence of the delay. If the bill has been accepted for honour, it should be first presented for payment to the original drawee, and, on his refusal, notice should be given at once to the acceptor for honour, to whom, after protest for non-payment, application should be made for payment with charges, not later than the business day following the due date.* If the drawees are not partners, the bill must be presented to each of them, unless a place of payment is indicated upon it.

* See Appendix.

Some banks do not like to receive bills for collection more than three or four days before maturity, but it is well that they should arrive at least the day before maturity, or a little earlier if not payable at a bank, because the banker may wish for special instructions before incurring heavy charges for presenting, if the acceptor lives miles away, as sometimes happens.

Banks usually endorse bills they send out for collection, placing over the endorsement the word "received," thus converting it into a receipt and hindering further negotiation in case the bills are lost. Receipts written on bills and cheques now require a receipt stamp.

When a bill not domiciled at a bank is not paid on presentation, it is usual to leave a notice describing it, and requesting that the amount may be sent to the bank within business hours.

If a bill *for collection* falls due after the death of the depositor, it should, on collection, be passed to the credit of his executors, unless the banker has a lien on the document.

Delay in presentation is excused so long as it is *entirely* beyond the control of the holder.

Payment should be made at the place indicated in the acceptance. The acceptor naturally is the person who ought to pay the bill at maturity; but if he does not, any endorser paying it is entitled to claim upon the estate of every party on the bill prior to himself for the amount, with expenses and interest, and he is also entitled to the benefit of any securities which may have been deposited by the acceptor to cover the bill.

If payment is not made in legal tender the bill should not, under ordinary circumstances, be surrendered until the articles received in payment have been converted into cash, and even then should anything be reclaimed, there is no recourse against any of the parties to the bill, except the acceptor, unless they have given their permission for such articles to be taken in payment. If a cheque is tendered in payment the bill should not be surrendered but attached to the cheque, to be given up with it on its being

cashed, and under no circumstances should a cheque be received which cannot be converted into cash on the day the bill is due.

Part payment should be endorsed on the bill thus:—"Received pounds in part payment of within bill, without prejudice to the rights of other parties." If the bill has to be sent abroad it should be protested for the unpaid balance.

In case of payment after dishonour, the drawee should reimburse the holder for the expense of noting or protest.

Payment by a bank where the bill is domiciled can be made, if the acceptor keeps his account there, without any advice beyond the acceptance on the bill, though some provincial banks refuse payment of such bills unless special orders to pay are given by the acceptors, and this course should always be adopted.

Bills Advised but not Presented for Payment.—When orders are received by a banker to retire a bill payable at his London agents he will debit his customer and credit them. If the bill is not paid within a reasonable time, he should advise his customer and seek his instructions. If he desires the order to be cancelled, after having done so and having made sure that the advice is also cancelled by his agents, the banker should reverse the entry and credit his customer again. One judge has, somewhat unreasonably, demurred to interest being charged against the customer under such circumstances whilst the amount was standing to his debit.

Orders to Retire Acceptances.—These should be signed exactly the same as a cheque, unless special instructions are given at the opening of an account.

If such an order is received near the maturity of a bill, and the customer's account will not warrant the bankers in providing for it, it is not enough simply to acknowledge receipt of the order, they must distinctly intimate that their attention to it depends upon their being provided with funds.

If the bill is payable at the London agents of his bankers, the acceptor must, of course, request them (his bankers) to order their agents to pay it, and such instructions should be given sufficiently before maturity of the bill to enable them to be repeated to London

before the due date. A customer's order to his bankers to protect his own acceptances requires no revenue stamp; if to retire another man's acceptances, it should probably be stamped. If documents are attached to an acceptance they should be fully described in the order to retire it. Care should be taken to disclaim all responsibility in case of bills to be retired which are not payable at the office of the country bank's own agents, or which are to be taken up with noting. The order may be advantageously worded, "Instruct your London agents to pay above acceptances when presented at their office."

Special Appropriations of payments to credit must be attended to, and if a customer pays in money, and at the same time declares it is to meet certain bills, the banker is bound so to appropriate it.

Acceptances of Strangers.—A banker cannot be compelled to receive money to retire bills domiciled with him or his agents by persons having no account with him, and he should always refuse to retire bills at the request of persons other than the acceptors, even if he knows them, because this opens a field for fraud and forgery. Attention to this rule would prove of mutual advantage to all bankers.

The Death of Acceptor before payment of the bill, if known to the bankers, cancels their authority to pay, and so does his bankruptcy.

Payment must, of course, be only made upon the accepted part when a bill is drawn in sets, and all endorsements must be followed even though there be a break in the specialty, and though the endorsements are in a foreign language.

If payment is made to a holder whose title depends upon a forged endorsement, the payer cannot charge his customer with the bill (unless it be payable to order on demand and *drawn on a banker*), nor can he recover the money from a *bonâ fide* holder whose position has been altered since the payment. If the forgery be in the acceptance itself, not in the endorsements, he cannot recover from the holder, unless he discover the forgery and give notice of it on the very day the bill is due. The like holds good

as to letters of credit, where the issuer stands in the same position as to forgery, as the acceptor of a bill.

Payment for Honour.—This should only be made after the bill has been presented to the drawee and protested for non-payment.—See Appendix.

Payment under Rebate.—In addition to the notes on this point under the head of "Acceptance," it may be remarked that the discharge should be "Received payment from————under rebate @ per cent this day of ." If a bill has no documents attached to it, or if they are surrendered to the acceptor on acceptance, or at any time before the maturity of the bill, he cannot insist on the bill being given up under rebate.

If a bill is given up under rebate because the acceptor is weak or has failed, the person who receives the money should cancel his endorsement, so as to preclude future liability under any possible circumstances.

Bills Recalled.—It is well to ascertain the reason of the recall, whether because the acceptor has remitted direct to the drawer, or because he requires assistance to meet the bill or a renewal of it, in which case a note should be made in the opinion book for future guidance. Acceptances recalled before maturity should not be cancelled, neither should they at maturity if retired by other than the acceptors, in which case therefore do not order payment but "withdrawal" of the bills.

Non-payment.—If a bill is not paid on presentation on the due date, it should, if not a purely inland bill, be noted the same day, or at latest on the next business day, though the protest can be completed on a future day. If, however, there is no available notary, the protest must be made on the due date. It is useless to attempt a protest after the due date, unless in the usual course of business a bill has been sent by post direct to the house where it is domiciled, when it can, immediately on its return, be protested as from the due date, if it leave the domicile on that date. Where no notary is available, any householder or responsible person may give a certificate, signed by two witnesses, attesting the dishonour of a bill, which will operate in all respects as a protest.

The certificate should run—

Know all men that I, A. B. (householder), of in the county of in the United Kingd m, at the request of C. D., there being no notary public available, did on the day of 190 , at demand payment (*or* acceptance) of the bill of exchange hereunder written from E. F., to which demand he made answer wherefore I now, in the presence of G. H. and I. K., do protest the said bill of exchange.

(Signed) A. B.

G. H., I. K., } Witnesses.

(Who give full addresses and occupations.)

A precise copy of the bill, back and front, with *all* that is written thereon, should follow.

This form of protest must be duly stamped, for which postage stamps are available.

It is not now necessary to note inland bills on dishonour, but if the amount is of any importance, and there is any probability of legal proceedings being required, it is perhaps expedient to do so. Notarial charges can be recovered from any party liable on the bill. Bills of Exchange Act, 1882, s. 57c.

Upon a bill being dishonoured, it should, on the day following the due date, be returned to the customer and his account be debited; but if the banker does not wish to give up his lien on the bill, it should be retained, and notice of the dishonour sent in writing to *all* the parties to the bill whose addresses are known, and against whom he wishes to have recourse. A useful form for notice is—

Bank, Stratford, 17th *February*, 1905.

To of . Please take notice that C. D.'s draft upon E. F. of Y., dated 12th November, 1904, at 3 months' date, due 15th February, 1905, payable at Jones, Lloyd & Co., upon which you are liable as (drawer, endorser, or acceptor) has been returned to us dishonoured by non-acceptance (or non-payment) and we request immediate payment thereof by you with expenses, £

Total, £ (Signed) G. H. & Co.

If this notice is sent by post, its miscarriage, if due to the Post-office, does not prejudice the holder's claim. If the addresses on the bill are insufficient or incorrect, and the full or correct addresses cannot be ascertained, the notices should be sent to the addresses that are given on the bill. Neither the death nor bankruptcy of any of the parties should deter the holder from serving

notice upon their representatives, and he should, if possible, send notice on the very day he hears of the dishonour, though if the person to whom he has to send it is in another place, he may be allowed to send it on the business day following the day on which he became aware of the dishonour.

If instead of an endorsement any person guarantees due payment of the bill, "as though endorsed by me," notice should also be given to him. The holder of a dishonoured bill is entitled to recover the amount of the bill, interest from the due date, or from date of presentation if a demand document, and also the expense of noting and of protest, if necessary.

If the dishonoured document is one received from a casual customer, the banker should not wait for him to call before giving notice, but should advise him at once of the dishonour. If a bill has been protested for non-acceptance, it should, when refused payment, be again protested.

When a bill is paid on presentation by the notary after dishonour, it is customary for him to insist upon his fee being also paid. There is, however, a legal decision to the effect that he cannot enforce this claim against the acceptor. After a bill has been dishonoured, great care must be exercised in making any definite arrangement as to postponing payment with any of the principal parties, or the holder may lose his claim against the other persons liable on the bill, unless when making it he stipulates "without prejudice to my claim on the other persons liable thereon or to any of their rights." It is well, therefore, to obtain the written sanction of anyone on whom the holder relies to such an arrangement before completing it. Of course a banker will not exchange a dishonoured bill for one payable at a future date, unless he is prepared to give up all his rights against the parties to the old bill in exchange for those acquired upon the new one. A composition accepted from an acceptor voluntarily (*i.e.*, without compulsion of law) releases the endorsers unless their consent is first secured. It is usual not to return an unpaid bill until the day following its dishonour, therefore it is not safe to assume that a bill is paid until time has elapsed for it to have arrived if returned the day after it fell due, assuming there is no delay in the post-office.

All dishonours which are not due to clerical errors, or which are not satisfactorily explained, should be noted in the opinion register against the acceptor.

An action cannot be commenced on a dishonoured bill before the expiration of the last day of grace.

Short Bills.—Bills not discounted, or which are not by the custom between the bank and the customer considered as actually sold to the banker, remain the customer's property subject to the banker's lien, but if the banker has wrongfully parted with them to a third party the customer cannot follow them. Such bills are sometimes called "Bills for collection," sometimes "Short Bills," because often they are not carried out into the cash column of the pass book, but entered "short" of it.

Cancelled in Error.—Where the holder of a bill, under a misapprehension and without authority, allowed an acceptor to cancel his acceptance, the cancellation was held to be inoperative. (15 Court of Sessions Cases—Scotch—408.)

Lost Bills and Notes.—The remarks upon lost cheques are applicable here, but if bankers are requested to stop payment of a draft issued by themselves, it will be well for them to be quite satisfied that the applicant has good cause to warrant his application, and they should take a good indemnity for so doing, as if there is no forgery a *bonâ fide* holder may compel them to pay him.

If a bill is lost or destroyed, application for acceptance or payment should be made on a written copy or on a written description, by a notary, or in protest form, and the drawee should be warned against accepting or paying on the demand of any other person than the one on whose behalf the protest is made.

Bills withdrawn from a banker should be applied for by letter quoting the drawee's name, the due date and the amount.

Applications for the issue of bills or banker's drafts, to be charged to an account, require a revenue stamp. (Inland Revenue Department, 24th January, 1896.)

Promissory Notes.

These generally are subject to the law of bills of exchange; they must be duly stamped with an *ad valorem* stamp, even if on

demand, contain an absolute promise of payment, and should state the consideration, *i.e.*, "for value received," &c., &c., though this is immaterial in the hands of a *bonâ fide* holder for value.

They may be given by one promiser or by several. In the latter case the promisers (or makers) may promise jointly, severally, or jointly and severally. They may be payable to bearer or order or to a designated individual only. They are subject to the Statute of Limitations, which may be pleaded in bar if, for six years after date of maturity, no acknowledgment has been made of the liability, either actually or inferentially, as by payment of interest on the principal sum. Such acknowledgment only binds those who make it. If they contain a pledge of collateral security with an authority to dispose of it they are not invalidated thereby, but great care should be taken not to make the note into an agreement.

A joint note is good only against all makers *together;* a joint and several note is good against all together or against each of the makers separately. A note in the form "I promise to pay," signed by several makers, is considered a joint and several note.

The death of any signatory of a note that is only joint terminates his liability.

Foreign Bills.

This section does not take account of Emergency Legislation and the references to Enemy Countries state the situation before the war.

Dishonoured Foreign Bills.

In Russia a bill at sight may be held for twelve months before recourse is lost against endorsers; and after protest (within the twelve months) action may be brought within two years of *date* of protest—*i.e.*, three years in all.

Crossed cheques are not as common abroad as here, but the use of them is increasing.* Bills upon Germany, Austria,

* In France a red cheque, called "mandat rouge," acts as a crossed cheque between customers of the Bank of France, being a transfer from one account to the other. In Germany Reichsbank cheques marked "nur zur Verrechnung" serve a similar purpose. Some French Banks issue crossed cheques.

Italy, Switzerland, and Russia must bear the words "bill of exchange" upon them or they are not looked upon as bills, and acceptance of them cannot be demanded. Instruction as to whether the documents are to be given up on acceptance or on payment should be clearly written *on the bills* to avoid dispute. Bills on India with shipping documents attached, if to be sold in London (not sent for collection), should have a freight receipt.

The full set of bills of lading and insurance policy should accompany every documentary bill sent for sale, and they should be to the order of the shipper, and endorsed in blank, never made out to the order of the drawee of the bill. All foreign bills above £50 in value should be drawn in sets of at least two, in order that one may be sent forward immediately for acceptance, whilst the other, having a reference upon it to the person who will hold the accepted first, may be negotiated as seems most advantageous.

All bills upon Portugal, Spain, America, Australia, and India, whatever their value, should be always in sets of two at least. Sometimes a second bill of exchange is not obtainable, in which case a literal copy of the bill should be drawn out, with all the endorsements except that of the holder. This duplicate should be marked "copy" on the face, and at back, below the last endorsement copied, "So far copy" should be written, and then the customer should endorse both bill and copy, as also should his banker when sending them for sale. In sets of bills on Germany and Russia, one of the set should not be endorsed at all, as to which, see "Stamps" (*seq.*) Bills with alterations should not be passed, even if initialled, if it is possible to get them redrawn.

Foreign Bills for Collection.—If they do not bear the clause "exchange as per endorsement," should be drawn "payable with approved banker's cheque on London for full face value," if on countries where exchange fluctuates rapidly (as Spain or Portugal, Shanghai, and Valparaiso); or "payable at banker's drawing rate for sight bills on London on date of payment," if on countries where exchange is steady; otherwise they may be paid at the short

rate for commercial Bills. Even with this precaution there may be a loss on the bills.

Date.—Cheques on France should contain the word "cheque" in their text, and have the date written fully in words, not in figures—thus, Eighteenth February, 1885; then the stamp duty is only 20 centimes (reduced to 10 cents, for those drawn and payable in the same place), instead of the *ad valorem* stamp. Cheques drawn in Belgium, if payable in the town where drawn, must be presented for payment within three days from their date, or the endorsers are discharged;* if payable elsewhere six days are allowed. In France the currency of a cheque is five or eight days, according as it is payable where issued or elsewhere. After eight days from date, the ordinary rules of protesting to preserve recourse do not apply.

Bills drawn in Russia and some other Eastern parts are often dated according to the old style, which is thirteen days behind the Gregorian calendar we use. To arrive therefore at the due date we must add thirteen days to the nominal date of *issue*, and calculate the maturity accordingly. Often the date is given in both styles, thus—"15/28 Feb." In Warsaw the new style has been adopted, and by law all bills drawn abroad on Russia conform to it.

Currency.—Bills having over three months to run are not readily sold on the Exchange. In Portugal all months are reckoned as 30 days, so that a bill @ 3 m/d is identical with one @ 90 d/d.

Amount.—It is desirable to insert in all foreign bills "value in account," "value in goods," &c. Bills on Spain and Portugal are payable in "legal money." Sterling bills on Holland are convertible at a short exchange, usually less favourable to the holder than the actual course of exchange. It is illegal to draw Russian drafts in "silver roubles," and such bills cannot be protested. If bills are drawn in sterling, the clause, "exchange as per endorsement in London," should be inserted in the body of the bill. By this means the loss in exchange and interest falls on the foreign

* The holders taking the drawers place if the drawees fail holding full provision.

drawee, and the holder here will obtain the full amount of his bill less brokerage only.

Acceptance.—The French, Spanish, Russian, and Swedish codes require the equivalent word for "accepted" as part of an acceptance. In Germany and France, acceptance is allowed for a portion of the bill, the balance being protested for. If a foreign bill is refused acceptance, it is protested, and notification given to prior parties, who may be required to give security for the bill being paid at maturity, but the bill itself is not returned until dishonoured by non-payment. What we term *supra* protest is, in France, termed "par intervention." Acceptance is not usually obtained of bills under £50 or having less than one month to run when they arrive in London for sale. The holders of bills on Spain are not bound to present bills for acceptance, unless after sight, and even then are allowed forty days from arrival of bills in Spain.

Endorsements.—French and German cheques may be to bearer, and Spanish cheques, in order to avoid *ad valorem* stamp duty, should not be drawn "to order," but to *payee* only or to *bearer*. All foreign bills, however, should be to order, except Italian, which may be as here, "To Mr. ——." All endorsements should be special, and bear the words "value in account" (or in goods, &c.), and the date and place of endorsement. The words "*retour sans protêt*" or "*sans frais*," indicate that the endorser does not wish expense to be incurred in case of any irregularity, but they should be repeated with every endorsement if still intended to be operative, and such bills are not so readily dealt with, and in many countries—*e.g.*, Italy, Germany —it is not obligatory to respect this clause.

"*Sans recours*" written by an endorsement, disclaims liability in case of non-payment, but probably, as in England, it would be no protection in case of a prior forgery. In Germany an endorser may limit the time for which he will be liable on his endorsement by adding thereto words to that effect.

Where there is no room on a bill for fresh endorsements, a slip, called an *allonge*, is attached, on which they can be written, the first endorsement on it so written as to connect the two papers.

Domiciled Bills.—See Appendix.

Stamps.—All bills negotiated here must conform to our stamp laws, and should also conform to the laws of the countries in which any of the parties thereto are domiciled. Bills on France, Belgium, Holland, Italy, Austria, and Spain, must be stamped on acceptance, so must bills drawn on but payable out of Germany. Bills payable in Germany and Russia require stamping as soon as they are put into circulation there, but not whilst they are only sent for acceptance. One, therefore, of the set should not be endorsed at all, but crossed on the back, to prevent endorsement, and headed on the face, "Nur zum Accept bestimmt" (only for acceptance). Some countries are particular as to the place on the bill on which the stamp should be placed, but on this point, and as to the proper value of the stamp to be affixed, your broker will guide you.

It is only necessary, in the case of Russian bills, that there should be no endorsements on the copy destined for acceptance only. On a German bill there may be endorsements, and the crossing would commence from the last endorsement made abroad (*i.e.*, out of Germany).

The Course of Exchange indicates the quotations current for foreign bills—the better quotation is that for fine banker's bills, the worse that for fair mercantile bills. In most cases the rate is quoted in the amount of foreign money given for a sovereign; thus, the Paris Exchange (short) may be quoted 25·32½, which means that the purchaser of a bill on Paris obtains 25 francs 32½ cents for every sovereign he pays here. It is clear that the more francs he can get in Paris for the pound he pays here the more favourable is the exchange to this country. Russian, Spanish, Portuguese, Indian, Chinese, and American exchanges are quoted in pence for their standard coin—rouble, peso, duro, milreis (in legal currency), rupee, tael, dollar, respectively—and in these cases it is equally clear that the most favourable rate here is the one where the fewest pence here purchase the most of the money in which the bill is payable. In some cases the rate of exchange given is for drafts on demand, but in most it is for drafts having three months to run. If, then, a bill has only two months to run—payable in Paris, say—the rate of exchange might be arrived at either by adding two months' interest, at the current rate in Paris, to the sight exchange, plus a

consideration for risk and stamp, or by taking the three months' rate and deducting from it a month's interest. If the bill were on New York, say, or any other place, for which the exchange is quoted in pence, the reverse operation would be required, instead of adding to the sight rate we should deduct, and instead of deducting from the long, or three months' rate, the interest should be added. If a rate is thus constructed for a bill at a currency not corresponding with the customary term, it is termed a *tel quel* rate. Sometimes, instead of making such a rate, the bill is sold at the customary course of exchange, and interest for the difference in currency allowed or charged, as the case may be.

The following tables indicate the trend of the exchanges for or against us, although allowance has still to be made for the price of gold here and the premiums abroad:—

	Gold comes to London.	Par of Exchange.	Gold leaves London.
Paris (short)	fc. 25·35	... 25·22½ ...	25·10
Berlin	Mk. 20·52	... 20·43 ...	20·34
New York (short) ...	$ 4·90	... 4·867 ...	4·84

Stamps.—The 10 cent duty on a French cheque drawn and payable in the same place *must be impressed;* the additional duty of 10 cents for a cheque drawn in one place and payable in another (*e.g.*, in Marseilles on Paris) *may* be, and the whole 20 cents on a cheque drawn abroad are, necessarily, denoted by adhesive stamps.

German cheques *drawn on a banker* require a stamp of 10 pf. if they contain the words "aus unserem Guthaben" (from our deposit) or their equivalent. Spanish cheques pay a duty of from 10 to 50 cents, according to amount, if payable to the person who actually cashes them, otherwise they are charged as bills.

Holland has a uniform duty of 5 cents for all bills payable *out* of the kingdom.

Bills passing through France, &c., by way of endorsement, are subjected to a special tariff (usually half the ordinary rates), but Germany passes such bills free of duty.

In most countries if one of a set is stamped the others are exempt. However, in Austria (except for bills drawn there on abroad, when the first may be issued unendorsed, without stamp,

and marked for "acceptance only"), all the copies in circulation must bear full duty. Bills drawn and payable out of Austria pay a smaller tax. In Italy the accepted bill is stamped *ad valorem*, so are copies up to L1,900; above that sum they bear a uniform duty of L1·20. Italy charges a higher duty on bills over six months, and a lower duty on bills drawn abroad which conform to the stamp laws of country of origin. In Austria the higher duty is on inland-drawn bills of over six and on foreign-drawn bills of over twelve months' currency.

Protests are usually levied on the day following the maturity. Many places allow two working days for taking out protest. In France, a protest levied on the day of maturity itself would not be legal, but a dishonoured bill, duly protested, may be returned any time within 14 days after maturity, and if returned to a foreign place still longer delay is allowed by law.

Bills falling due on Sunday or a holiday are payable, in most Continental places, on the business day following, but Belgium and one or two other countries adopt our custom in this matter.

Days of Grace.—In Russia there are no days of grace. A bill may be presented for payment on its due date, or on one of the two nearest following business days.

Bills on Germany, France, Italy, Denmark, Sweden, Norway, Holland, Belgium, and the State of New York, carry no days of grace, but in Holland and Belgium protests are levied *two* days after maturity. Indeed, so far are these days accounted "days of grace," in the former country, that it is the custom to charge two extra days on discounts, as though the bills fell due two days after the actual maturity. Again, in Germany, Italy, and elsewhere, the protests *may* be taken out within two working days of maturity. In Holland the drawees of bills marked *sans frais* are usually allowed 15 days' grace.

Letters of Credit (Delegations or Mandates, Marginal Credits), Circular Notes, Drafts on Abroad, &c., &c.,

A letter of credit (otherwise called a delegation or mandate) is a document authorising the addressee to hold a given sum at the disposal of the payee, or authorising the addressee to draw upon the

grantor for a certain amount. In the latter case it is usual to stipulate that the drafts are to be drawn at certain currencies and before a certain date, and the grantor undertakes to honour such drafts on proper presentation. Sometimes stipulations are added that securities or shipping documents are to accompany the drafts, and in all cases it is required that any drafts against the credits are to be endorsed on the original letter of credit.

It is desirable to furnish the grantor with two specimen signatures of the person who is to receive the money, which can be sent to the addressee to enable him the better to identify the payee on his application.

They should also be furnished, where possible, when drafts payable abroad are required in favour of persons non-resident at the place of payment.

A new form of credit is sometimes received from abroad promising to negotiate certain drafts, but it does not stipulate "*without recourse*," and therefore is misleading and to be avoided.

Marginal Letters of Credit are similar in form to ordinary letters of credit; but the authority to draw and the undertaking to accept, with all conditions, is on the margin of the bill form upon which the draft is to be drawn. The issuer is bound to accept any draft drawn in proper form, according to the expressed conditions of the credit, irrespective of any private understandings between himself and the grantee, and even though the grantee may have failed after he has drawn the draft, but before it has been presented to the issuer of the credit.

Before any repayment is made of the unused portion of a credit the original letter must be restored to the issuer, or if a credit or draft has been issued in duplicate, both parts must be so returned. If a correspondent, instead of issuing a letter of credit, writes to a banker establishing a credit, the banker should advise the person in whose favour it is opened of the amount and conditions of the credit, and reserve the right to withdraw it at any time, if it is not for a fixed period.

Delegations, or mandates, from abroad, if on demand, require a

twopenny stamp ; if endorsed but not payable on demand, they must bear the *ad valorem* stamp, and carry three days' grace.

Circular Notes are practically credits issued by the issuers on their own special form and referring to a letter of indication addressed to their agents generally. This letter bears the signature of the person to whom it is issued, as well as that of the grantors, who request their correspondents to cash these credits to the grantee, on his signature being given to the order endorsed thereupon. The number and amount of the notes are usually stated on the letter of indication. If these circular notes are required, the issuers should be furnished with two specimens of the signature of the person in whose favour they are to be issued, and the amount of the notes required should at once be paid to the issuers. Should it become necessary to recover the value of any notes not used, they should be signed at back by the grantee before being sent up for repayment.

If circular notes or letters of credit are tendered for encashment, having first made sure of the authenticity of the letter of indication or of credit, the banker will then verify the signature of the presenter as that of the person authorised by the issuers to receive the money, and the better to protect himself, it is desirable to insist that all such signatures shall be actually signed in his own presence, and not tendered in a completed stage, as a forgery cannot then so readily be perpetrated without detection. If the payment is made under a letter of credit, the banker must see that, in addition to the credit being genuine, it is not stopped and not out of date, that the amount for which it is issued has not been tampered with, that the amounts of the payments already endorsed upon it show no signs of having been altered, and that their total, with that applied for in addition, do not exceed the amount for which the credit is issued. He must then see that the draft against which he is going to make the payment conforms exactly with the instructions on the credit, and especially that it quotes the number and date of the credit, and the name of its issuers if the draft is to be drawn upon a third firm for account of the issuers. The draft being in order, the amount of it should be endorsed on the credit in words as well as figures before paying the money to the applicant. If the banker recoups himself for his trouble by deducting a com

mission and any demur is made, an explanation that it is the mode in which he makes a rate of exchange on the place where the draft is payable, will usually be accepted as satisfactory.

The bearer of circular notes should be careful to keep his notes and his letter of indication apart; for if through his carelessness in this respect the documents are stolen and the notes cashed, he will probably be debarred from recovering his loss from the issuers.

"*Marginal Receipts.*"—These are receipts given for the balance of documentary bills, which is not paid over to the seller of the bills until advice of payment has been received. If deposited with a third party as security, notice should be given to the issuer, and then he will have no lien upon them for any fresh liabilities contracted by the original owner, after receipt of the notice.

Credits in Account.

When bankers receive anything for credit of an account, they are bound to appropriate it strictly in conformity with the instructions given at the time it is paid to them, whatever may be the position of affairs between them and the person to whose account the money is paid. Once having received an amount for the credit of a third party, the bankers should on no account permit the transaction to be revoked, if they have in any way informed the person to whose credit it has gone of its receipt, or if they have once issued any form of receipt for it, because though the receipt may be returned to them it may, in the interval, have been exhibited to their customer, and on the strength thereof he may have altered his position with the payer. These receipts, if they *only* mention the name of the person to whom the money is to be accounted for (*i.e.*, the banker's customer), require no revenue stamp. Should bankers receive anything but legal tender for the credit of a customer from a third party, they should, in advising their client, describe the items of the credit, as "Local Notes," "Cheques not yet cleared," "Country Cheques not yet cleared," "Bankers' Draft due on such a date," &c.; and it is well to give full particulars of each article in the credit. Unless they have special instructions to do so, they should decline to receive undue trade bills altogether. If bankers have occasion to advise a correspondent of the receipt of any items for his

credit the letter of advice should invariably be confirmed by the signature of an authorised official.

A banker does not lose the protection of Sect. 82 Bills of Exchange Act by crediting a customer before he actually receives payment of a cheque (see 1906 Act).

If an amount is wrongly credited to an account, the banker must not return cheques drawn on faith of the credit. The mistake must be rectified later. (See Holland *v.* M. and L. District Bank, 1909.)

Payments for Account.—From time to time a banker is required to make payments for his customers against their special orders. Thus, he may be instructed to pay club subscriptions, insurance premiums, &c., &c., as they fall due. The standing order given to him by his customer should bear a twopenny stamp, and care must be excercised in attending to the orders; for if once he agrees to pay, say, insurance premiums, should he thereafter forget to do so he will be liable for any loss that may consequently occur to his customer. If a customer wishes the banker to arrange for his cheques to be paid elsewhere, it is desirable that in his request he should agree that the office at which his cheques are to be paid shall be in the same position as his own banker, as to non-liability for forged endorsements on his cheques.

All credits of this kind which are established should be noted in the customer's account as well as in the Register of Credits opened, so that if he stops a cheque every office where his cheques are payable may be advised thereof. The letter opening a credit should distinctly bind the banker who opens it to honour all payments made under it until it expires, either by lapse of time or by being withdrawn. Of course, the letter will be signed by a duly authorised official, whose signature the receiving bank will verify, and the letter should contain specimens of the signatures of the individual or individuals (if a firm) as they will appear on the cheques. It is perhaps most convenient that these cheques should be drawn upon the bank opening the credit, and marked "payable at bank."

Coupons.

These should not be credited until advice is received of the exact amount they have realised, because of the differences that are sure to arise in the calculation of Income Tax. Although it should be

easy to determine the exact deduction to be made for this tax, yet, since the Government year does not coincide with the commercial year, difficulties often arise. It may be observed that the paying banker simply follows the instructions of the issuer of the bond as to the rate at which he deducts the tax; any complaint should therefore be addressed to the issuer or his agent, not to the banker.

In order that the coupons may be cashed on the due date, they should be sent up at least ten days before maturity. Neglect of this precaution causes delay and much consequent complaint.

Some coupons, at the holder's option, are payable either here or abroad, and, when the rate of exchange is favourable, they are often sold, the Income Tax being deducted by the banker, by order of a recent Act of Parliament. In such cases the banker should have precise instructions as to whether they are to be collected or sold, or he may be censured, in the one case for obtaining so little, or in the other for causing loss to his customer, because the purchaser of such coupons will reclaim the amount, should the Company liable on the coupons stop payment in the interval between the sale here and the time when they could be presented at the paying office abroad, as happened in the case of an American railway some years ago. The bank should always reserve "recourse" on coupons.

Coupons do not require any revenue stamp now, and should not be "crossed," because, if they are returned unpaid, the "crossing" will prevent the sale of the relative bonds on the Stock Exchange, where they will not be a "good delivery." Coupons should be sent up in numerical order, and with the coupons of each *class* of bonds, as well as of each Company or State, on a separate list. Drawn bonds sent for collection should be treated in the same way as coupons and insured in transit by post.

Deposit Receipts.—These receipts for deposits are not transferable documents, but they have been held to be a good subject of a *donatio mortis causâ*, even on the uncorroborated evidence of the donee, if endorsed by the depositor. (Emden 143, 144, 1888. 134, 1890.) If they are issued to more than one person, particulars as to withdrawal, and as to the rights of survivors, should be endorsed on them at the time of issue.* Specimens of the depositors' signatures

* Otherwise they pass to the survivors and can be withdrawn by them on proof of death of joint depositor. But see page 65

should always be taken in the signature book. Great care should be exercised in paying them if the depositor does not attend in person, and no cheques should be paid against an amount for which a deposit receipt has been issued without its production. If the receipt declares the deposit to be at seven days' call, it should not be paid until the notice has expired. Although properly receipted by the depositor it might be presented by a wrongful holder, and not being a transferable document, the banker might be required to pay the amount again if he paid it before maturity.* It the deposit receipt is lodged as security for payment of a bill, a memorandum should be taken to that effect, or a cheque given, "pay A. B.'s acceptance," to be held until the bill matures. If a banker has to collect a deposit receipt of another bank, the person in whose favour it is issued should sign a receipt at the back in these terms: "Received within named sum of , with interest to this date," and a receipt stamp should be affixed.

Stocks and Shares.

When customers have instructed a banker to buy or sell stocks, it is not unusual for dissatisfaction to be expressed because they have not obtained the best quotation of the day. The explanation is that the broker, to whom the banker gives the order, applies to a "dealer" in the security to which the order relates, and, without indicating to him whether he is a buyer or seller, asks him to make a price. The dealer names two prices, at the lower of which he will buy, and at the higher of which he will sell, and the sale or purchase is then effected if the prices are within the limits of the order. By this method the customer is most equitably treated, though it is clear he cannot buy at the lowest or sell at the highest price, the dealer taking the "turn" between the two prices he quotes, as his remuneration for offering a ready market.

Transactions on the Stock Exchange are usually made for "the settlement," of which, for most stocks, there are two in each month, one near the middle, the other at the end. For Government (English) stock there is however only one settling day, at the beginning of each month, but the market for these stocks is so active that they

* See Wood *v.* Clydesdale Bank, Court of Sessions, 19th June, 1913.

can readily be bought "for cash," "for account" (or settling-day), or for any intermediate term that may be desired.

A banker should keep a record of all transactions on behalf of his clients. The responsibility of the Banker for any forged deeds must be kept carefully in mind.—Lord Mayor of Sheffield *v.* Barclay, 1905.

The following form contains the particulars which should be obtained from a customer and communicated to the broker, the variable details being those in italics:—

Manchester, 18 *July*. 190—

To Bank.

Instruct your Brokers to { *buy* / *sell* } { *for cash* / *for account* }

{ *Two thousand pounds Consols* / *One hundred shares in the Baku Co*, } at { *not over* / *not under* } £ { per cent. / per share }

to be registered in the names of / *now standing in the names of* } (giving full Christian names and precise addresses and occupations) and { *charge* / *credit* / *proceeds of* } same to the account of

This order to remain in force until { *cancelled in writing*, / 28 *July*, 190—.

(Signed) A. B.

If a purchase, this order should be signed by the person whose account is to be debited with the cost, in *exactly* the same way as a cheque and stamped two pence. If a sale it should be signed by *all* the parties in whose name the securities are registered, or, if they are unregistered or transferable by mere delivery, by all those who are represented as the owners.

Sometimes an order is given to "invest" a given sum of money in a purchase, not to "purchase" a given amount of stock. The effect may of course be very different, and in all cases orders should be carried out to the letter, particularly if given through a solicitor, only seeing that he furnishes the proper authority of the owners of the money or securities, as the case may be.

When the order has been executed the broker will send a contract note, setting forth the conditions upon which the transaction has been concluded, and in purchases he must be provided with the amount of his account, *in cash*, on the day fixed by the contract for completion of the purchase.

Where the Bank of England keep the transfer books, the following regulations apply, but since April, 1912, Government Stocks can be made transferable by deed.—See Appendix.

The bank provide their own forms for all documents required in dealing with stocks.

Any number of holders can be registered in one account, and holders can be registered as trustees.

If stock is to be registered in the name of a corporate body which acts by seal, a form (obtainable at the bank) of request to open a corporate account must be lodged at the bank. On this must be given a certified impression of the common seal, and a certified copy of the rules and regulations in force regarding the use of such seal. The Act of Parliament, Charter, etc., under which the body was incorporated must be quoted. The bank reserves the right to call for such evidence of incorporation as they may think fit. If a corporate body wishes to open a second stock account, a second request is not necessary.

Additions to joint holdings are not permitted where any of the holders are dead, until the deceased's name is removed, but the survivors can purchase for a new account, and request that the old account be transferred to it.

The stock receipt issued when a transfer is made is of no value. The title is the entry in the bank's books, and this can be verified by " accepting " the stock or by obtaining a " verification certificate."

Transfers must be executed in the books *at the bank*, except for Indian Railway Debenture and one or two other stocks, where the usual stamped deeds and certificates are required. Usually all the stockholders (identified by a stockbroker) or their Attorney, must attend personally to execute a transfer. —See Appendix.

If any holder changes her name by marriage the bank must be informed of the fact.

To obtain a power of attorney full and precise particulars of the names, addresses, and occupations of the stockholders, *as registered in the bank's books*, must be given, and also the exact amount of stock held, unless the power is only to apply to a portion thereof. A power of attorney for sale or transfer, or both sale and transfer, and

dividends, with which a power to accept stock will be included on request, can be obtained free of cost—a power for dividends can be obtained, but under the regulations now in force (see next page) it is an unnecessary expense. If dividends are to be sent by post the power should not refer to them. A power for sale or for dividends is still available after death of some of the stockholders in a joint account, if the deaths have been proved at the bank. The name of a stockholder is not removed from an account when his death is proved.

Applications for powers of attorney should be made personally, or by an agent, *not by post.*

If a stockholder, after the issue of a power, personally operates upon his account or executes a new power, the old power is thereby revoked.

The instructions as to the execution of powers, printed at the back of the forms must be scrupulously attended to.

If a stockholder dies, his death must be proved at the bank. If he were a sole holder, or the *last survivor* in a joint account, probate of his will or letters of administration must be exhibited; and wherever the deceased died, these must be under grant from the High Court of Justice. If the sole or *last surviving* executor of the stockholder dies, probate of his (the executor's) will must be produced; or if he died intestate, a grant *de bonis non* to the estate of the stockholder to whom he was executor is required, which last is also needed on the death of the sole or *last surviving* administrator.

If a probate or letters of administration have already been exhibited at the bank, it will usually be sufficient to cite the bank mark thereon. All Scotch or Irish grants must be sealed by the English Court.

If there be a surviving stockholder or executor, or administrator of a stockholder, left in the account, death may be proved by exhibition of probate or letters of administration, or citation of Bank of England mark thereon, or by death certificate of the *general* registry (only) of London, Dublin, or Edinburgh, or by the death certificate of a Scotch District Registry, or by a properly certified extract from a registry of burials.

If the death occur in a foreign country, it may be proved by an

extract from the register of burials kept by the British chaplain, or a certificate of death or burial conforming to the law of the country where the deceased died, the signature to the extract or certificate to be authenticated by the British consul or vice-consul (under his official seal), or other competent authority.—See Appendix.

Various declarations of comparison or identity may be required with these, and are prepared by the Bank of England *after* production of above, and forms furnished by the bank must be used.

Dividends are sent by post to stockholders, their attorneys, or nominees, or will be paid to stockholders or duly authorised attorneys personally at the head office of the Bank, or, by arrangement, at any of its country branches, on written request. Ordinary forms of request can usually be obtained at a Money Order Office. For attorneys or residents outside the British Isles or Ireland, application must be made to the Postal Warrant Office at the bank. In applications if any dividends are overdue they should be specified. If possible, applications should be lodged six weeks before the dividend they relate to is due. Notices of changes in address should *reach the bank* at least three days before the dividends are due. The bank will not specially cross warrants or indicate the accounts to be credited. The bank's own forms must be used.

The bank requires a special authority to send dividends to a foreign address.

Where one of several joint holders is a lunatic a power for dividends can be obtained after a production of a statutory declaration from his regular medical attendant, and if he is in an asylum, a declaration from the keeper of the asylum, or if he is at home, from a second medical practitioner, in all cases supported by a declaration of identity. Details of the declarations required can be obtained from the bank.—See Appendix.

Income-tax is deducted, failing instructions to the contrary from the Inland Revenue Department, from all dividends of £5 per annum and upwards,* and repayment must be claimed through the surveyor of taxes for the district where the stockholder resides. No certificates of deduction are issued by the bank. They are not necessary.

* For the "War Loan" the limit is £9 per annum.

Tax is not deducted from registered or inscribed from 5 per cent Exchequer Bond, 5 per cent War Stock and 5 per cent National War Bonds, but the dividends must be included in the recipient's Income-tax return.

Indian Government Promissory Note (Rupee) Loans.—These can be held as notes or registered as stock. Notes must be left with the bank (not sent by post) at least seven days, when the interest bill is claimed. The interest bills will be delivered to the owner of the notes or stock or his attorney or agent, or posted to him or his authorised agent on signature of a form obtainable at the India Office, Bank. Notes can be converted into registered stock at the bank, and promissory notes obtained for stock (or filled up notes) for 2s. per note. Registered rupee stock is subject to almost the same regulations as the English funds. Some Indian rupee loans are issued also in the form of coupon bonds.

Dividends on Indian Railway Debenture Stocks and Chinese 5 per cent Stock are *all* sent by post to the stockholder or to his nominee.

The following Stock Exchange regulations may be noted:—Stocks transferable by mere delivery must be delivered by 2-30 p.m. on the settling day, or they can be "bought in" on the following day, at the expense of the vendor. Shares requiring a transfer may be delivered within ten days from the settling day. The purchasing broker will not pay until the transfer is tendered in proper order, but the vendor's broker is entitled to demand payment on the settling day, or as soon after as the transfer is ready.

Sometimes instead of settling stock transactions direct with the broker, a banker instructs his agents to pay the broker on delivery of the specified securities, if in apparent order. In this case the order should indicate whether the money may be paid *pro rata* for the securities when tendered piecemeal, and whether share certificates are to accompany the transfer, or whether a "certified" transfer may be taken. A certified transfer is one which, in place of having share certificates accompanying it, has a certificate upon it, from the registrar of the company whose share it refers to, certifying that share certificates to meet the transfer are already lodged with the company. A similar certificate is often given by a stock exchange

secretary, and a transfer with such a certificate by the Secretary of the Share and Loan Department of the London Stock Exchange is held to be a good delivery in the London market. Such certificates by an individual broker would not be accepted, and I am informed that the certificates of some provincial stock exchange secretaries would not readily be accepted out of their own local market.

In some cases it will be desirable to ascertain, before parting with the purchase money, whether the company's regulations require the name of a new shareholder to be submitted for approval, whether all calls have been paid, and whether the company have a lien on their shares which they have reason to enforce; but these are not points with which a banker need concern himself, except where he accepts orders *qua* broker. Then, in addition, he should see that his client obtains any dividend to which he may be entitled.

When a transfer is sent in it should be executed as promptly as possible by the purchaser, and sent, with share certificates attached, for registration, either through the broker or direct to the company to whose shares it relates, in which case enclose the transfer fee.

In the case of sales, similarly, securities are sometimes sent direct to an agent, to be surrendered against payment. The broker is entitled to examine them, to see if they are in order, before paying for them, but the banker should not deliver them to him except in exchange for cash, unless specially authorised to do so. The consideration money mentioned in the transfer may not agree with the amount for which the banker's customer has sold the stock. This is explained by the fact that it may have been sold over and over again before it was actually transferred, and the price given by the last purchaser, not that taken by the first vendor, is inserted in the deed.

"The Stock Exchange Official Intelligence" is essential in any office where much stock and share dealing is transacted, or where many marketable securities are held; and "The Country Banker's Handbook," by George Kiddy, is also very useful.

Accounts of Customers.

When a stranger proposes to open an account, a banker should require an introduction from some person known to him. This introduction, if not given personally, should clearly set forth the

purpose for which it was given, and should bear the signature of the introducer; his address card should not be accepted as sufficient, and even a written introduction should be only accepted as a preliminary, for some people are so ready to give letters that a banker would never think of giving credit on the strength of an introduction, unless very explicitly worded, without first ascertaining from the writer, privately, what he really knows of the introduced person. He may, however, on presentation of the letter, open the account so far as to take the presenter's signature in the signature book, receive his deposits, and obtain from him such information concerning himself as he is disposed to impart, or as the banker is able to extract from him. Having done this, the banker will take the earliest opportunity of communicating with the introducer.

The opening of an account is a matter of some importance. From the first interview the customer will receive impressions that may, and probably will, affect all his future connection with the bank; a little attention and courtesy will secure his good will, and dispose him to commend the bank to his friends. The ideas he then receives of the banker's manner of doing business will guide him in all his future dealings; to secure, then, his confidence, to induce him to speak freely of his financial affairs, to make him feel that in his banker he has a trustworthy confidant and a prudent adviser, is to ensure that his future dealings with the bank will be on an agreeable and safe basis. Neglect to secure these advantages at the commencement is unwise, and likely in the long run to cause annoyance, anxiety, and perhaps even loss.

By patient listening, by suggestive remarks, and courteous questions, the banker will ascertain his customer's business, its character and customs, the length of time he has been engaged in it on his own account, his previous experience, and where acquired, the names of the principal firms he buys from or sells to, the extent of his business, the nature of his receipts and payments, the name of his previous banker, and his reason for moving his account, or whether he proposes to keep more than one banker (an operation usually costly alike to the customer and to the bankers), the amount of his capital, and the details respecting it, more fully referred to in the notes on Balance Sheets and Advances. These and many other

such details it is of advantage for the banker to know, and by acquiring such information he shows his ability, and does much towards protecting himself from bad debts.

If the customer makes large deposits, the banker will make such arrangements respecting notice of their withdrawal as his business renders expedient, particularly when offered in seasons of pressure at a high rate of interest.

Minors' accounts are not desirable, though no doubt payments made to a minor against his cheques upon his own deposit account are a good discharge. An advance to a minor cannot be recovered.

It has been held that a Receiving Order could not be made against a firm because one of the partners was an infant, but the order may be amended by adding "other than the infant partner."

Personal Accounts.—If a customer has several accounts, he may elect to which account his payments to credit shall go; but if he indicates no preference, then the banker has a right to pass them to whichever account he pleases. (See page 48.)

However many accounts a customer may have in his own name, unless there are indications that any of them are trust accounts, the banker may treat them all as one, even if kept at different offices of the bank, in estimating his liability to the bank; and if any of the accounts turn out, *after* the customer's failure, to be trust accounts the banker can still retain the balances against any other of his accounts that are overdrawn. This consolidation of accounts only applies to accounts in the customer's own name. The banker cannot retain the balance of a partner's private account against a debt due from his firm or *vice versâ*; and if the partner, to obtain better terms, desires that for the purpose of interest the accounts should be treated as one, he should give a written authority to the banker authorising him to hold the current balance of his private account against any liability that his firm may at any time be under to the bank. A married woman's account cannot be set off against her husband's without a similar authority.

Married Women.—Should a spinster or widow be married, her account should be transferred from her former name into her married name, and headed, "Mrs. ———, formerly Miss ———, or formerly Mrs. ———, a widow." Should the right of a married

woman to the balance of her account be disputed, it rests upon the claimant to prove his title, or obtain an injunction, but the banker should at once give his customer information of the notice served upon him. In any dispute the bank may apply summarily to any judge, who may make an order as to the dispute and as to costs, and the bank will only be treated as stake-holder.

The Married Women's Property Act, 1882, does not affect settlements made prior to the Act, and as to wives married prior to 1st January, 1883, it only affects property that may accrue to them after that date. The Act of 1870 protected their earnings and property acquired thereby, if earned after 9th January, 1870. A woman married since 1st January, 1883, keeps as her own all her property then belonging to her, and since acquired by or devolving upon her; and whenever married, she keeps all property acquired by or devolving upon her since that date (1st January, 1883), in whatsoever way obtained. If stock or money stands in her own sole name, that is *primâ facie* evidence, empowering her to deal with it without the consent of her husband.

Lunatic Customers.—Strictly, a banker should be furnished with the legal authority, appointing a person or persons the "Committee," of the lunatic's estate, all of whom should sign all documents; but if the person who wishes to intervene will provide a statutory declaration by two medical men, declaring that the customer is of unsound mind, and incapable of managing his own affairs, and, further, lodge a satisfactory guarantee or security, the legal authority may in some cases be dispensed with. Until a customer has been officially declared to be a lunatic, or a receiver of his estate has been appointed, a banker has no legal right to refuse to pay his cheques.—See also *Lunacy Act*, 1890, Sec. 299, ss. 2.—See Appendix.

Agents for Customers.—If a customer empowers another to deal with his account, he should give in writing a proper authority for the banker to honour his nominee's signature, and specify precisely the extent of the power with which he entrusts him. It should recite that he may draw and endorse cheques and bills, give acceptance to drafts, and in every way operate upon the customer's account, in the same manner and to the same extent as the customer

could himself, and that the authority is to continue until revoked in writing. If it is intended that he should have power to obtain advances from the banker, or operate on an overdrawn account, this should be explicitly set forth, or the customer will not be liable. But see *Reid* v. *Rigby*, 10 Reports, 280 (1894).

An agent may be authorised to sign the firm's name (thus, A. B. & C°), though usually he is authorised to sign per procuration (p.p. A. B. & C°., C. D.), but if he signs in this usual way, it is incumbent upon the banker to satisfy himself that he really has the authority he assumes. He may have authority to draw bills, but not to endorse or accept them, and in that case any endorsed or accepted by him do not bind his principal, or give a title to anyone who has to claim through the endorsement.

It may be repeated that if an agent endorses without authority uncrossed cheques, payable to the order of his employer, and passes them to credit of his private account, the employer may recover from his agent's banker the full amount of such cheques which he may have encashed, and the crossing of a cheque by the banker is not retrospective in the protection it gives.

Some time ago bankers who had so treated cheques, which were crossed when tendered to them, were declared to be liable to the employers in whose favour the cheques were drawn, on the ground that they had been guilty of negligence in not enquiring as to the agent's authority to endorse.

All authorities of agents are cancelled by the death, bankruptcy, or insanity (legally declared) of the principal, and no agent has power to delegate any of his powers, unless the instrument appointing him explicitly gives him power so to do.

Although an infant cannot contract for himself he may be empowered to act as an agent or as a partner to bind his firm.

The letter sent by a customer to the banker, authorising him to honour his agent's signature, does not require a revenue stamp, unless it contains an agreement also.

If an agent is acting under a power of attorney, its provisions should be carefully scrutinised, for the giver is only bound to the extent set forth in the document. A full power of attorney should

give the agent power to draw, endorse, accept, and negotiate bills or cheques, borrow on the liability of the giver, pledge his property, real and personal, and in every way to operate on his account as he could himself if present. If it is intended that the agent should sell property, it should also empower him to convey the same, and it may give him power to appoint one or more substitutes, with all or a portion of the powers delegated to him.

An attorney may sign his principal's name solely, but it is better to add "by his attorney C. D.," if he do not sign by procuration in the usual manner of agents.

Under a power of attorney, which recited that the grantor was going abroad and was desirous of appointing attorneys to act for him in his absence, without any more precise limitation of the duration of their powers, it was held that a charge given fraudulently by the attorneys, after his return to England, was invalid, though the bankers to whom it was given were not aware that the grantor had returned to England.

Deceased Customer.—When an individual dies, all transactions upon his account must cease until probate of his will or letters of administration are issued, when the persons nominated therein become his legal representatives, and any action taken on the strength of those documents is good, even though in the former case probate is based on a will which afterwards turns out to have been forged, and though in the latter a will is discovered after administration has been granted. In the case of a minor, administration must be taken out by his next-of-kin.

It has been decided that a banker cannot set off the credit balance of a deceased customer against a note maturing after his death, nor has he a lien on the executors' account for any debt from the deceased.

A deceased married woman's separate property must be controlled by the usual probate or administration. A married woman may be an executrix, administratrix or trustee, alone or jointly, and may act in these capacities entirely without her husband, who, of course, incurs no liabilities for her acts.

If advances are granted, for the convenience of the customers, before production of the probate or administration order, to the

nominated representatives, for payment of probate duty, it should be on the introduction of respectable solicitors, who can assure the banker of the position of affairs, and show the will if there be one, appointing the executors, and the banker should advance upon the signatures of them, or of the heir, if there be freehold estate.

Production of Probate or Letters of Administration.—When these are produced, the banker should take specimens of the signatures of the representatives of the deceased, and transfer the account, if in credit, into their names. He will take a record of the particulars given in the probate, and supplement them with an abstract of the will, so that if the deceased has left authority for his business to be carried on, he may see who are entrusted with the management of it, under what conditions, with what powers, and particularly whether they have power to draw, accept, and endorse bills, enter into any usual business contracts, borrow money, mortgage and sell property, execute deeds, &c., &c., and to what extent the capital of the business will be reduced by the payment of legacies, &c., &c.

The registers of all deaths (and also births and marriages) are kept at Somerset House, and any period not exceeding five years may be searched over on payment of one shilling. It can also be ascertained whether probate or letters of administration have been granted, and wills may be perused.

Bankruptcy.—Any payment made after knowledge of an act of bankruptcy may involve loss.* No account should be opened with an undischarged bankrupt. A banker is required by the Act of 1914 to report and to pay to the trustee of the bankrupt all money or securities he may hold in excess of his claim.

Executors' Accounts.—If an account is opened in the names of executors, as executors, precise instructions should be taken in writing and signed by all of them as to their wishes with regard to operations upon it. If they decide that all cheques on, or other orders to debit, the account are to be signed by two or more of them, the banker should act accordingly, and can refuse a cheque signed by one of them, though in absence of such orders any one executor or administrator is capable of dealing with the funds of the estate, and can give a good discharge, in this differing from

* See McCarthy *v.* Cap. and C. Bank, *Law Times* Reports, Dec., 1912.

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trustees, all of whom must unite in all transactions. An executor cannot bind his co-executors by any transactions he may enter into alone, although he can, as far as his powers go, bind the estate. Executors are personally liable, as are administrators, on all contracts they make in dealing with an estate.

If the executors propose to continue the business of the deceased, they can only bind the estate so far as their special authority in the will may empower them, though they will be personally liable for all contracts they may make in connection with the business.

A married woman may be an executrix; but her husband and his property are under no liability for her acts in that capacity.

If a last surviving executor die, and no provisions are made in the will, his duties devolve upon his executor, but not on his administrator.

If a sole administrator die, fresh letters of administration must be taken out; the representative of a deceased administrator is not recognised.

Executors, if they intend to act, must prove the will appointing them within six months after the death of testator. Penalty, £50.

If an executor, indebted to the banker in his own private capacity, on being pressed to reduce his balance, transfers any sum from his executorship account, the banker cannot hold to the money in case of fraud on the executor's part, but will have to refund it.

If an executor disburse the proceeds of an estate in payment of the liabilities of the deceased in order of their legal priority, he is not liable for any deficiency in the estate. An executor or administrator, unless appointed *qua creditor*, can retain his own claim out of legal assets in priority to others of equal degree.*

Joint Accounts.—When two or more persons, not being partners, open an account, it is desirable that they should at the time declare in writing that it is "with benefit to the survivor," for though this is the legal devolution of such an account it will save future misapprehension if all is made clear at first. All that survivors have to do in such a case to establish their claim, as far as the banker is concerned, is to furnish satisfactory proof of the death of the deceased by production of certificate of death or burial, which

* See Rules of Probate Court, 1900. The new form of Bond excludes preference, but in "*re* Harris" (*Solicitors' Journal*, 4th July, 1914) right of retainer was supported.

sometimes it is desirable to have supported by a declaration of identity.

Instructions (signed by all) should be given as to signing of cheques, otherwise all must sign every cheque, and every cheque should bear the full heading of the account, as it appears in the bank's books.

In case of a joint account in the names of husband and wife, or father and child, the Revenue Officials say the banker should require production of probate or administration in case of a decease, in order to establish the sole claim of the survivor. As to presumption of survivor's beneficial claim, see in *re Warwick*, *Warwick* v. *Chrisp*, 56 S.J., 253 Parker J.

Although in a joint account it may have been arranged that any one of the joint depositors should sign alone, any of them may cancel this authority, and the banker incurs no liability by following these later instructions. The executors of a joint depositor have equal power to forbid payment of any part of the balance to the survivors without their consent, and their instructions must be attended to.—See Appendix "Joint Accounts."

Partnership Accounts.—Anyone who, by word, writing, or action, leads others to believe that he is a partner, or knowingly allows such representations to be made, is liable on the contracts entered into in faith of such representations, even though actually he may not be a partner.* A banker should in all cases endeavour to secure a written acknowledgment of the liability of every person on whom he relies in dealing with a firm, unless his partnership is a matter of common notoriety. He should, therefore, require all partners to sign the name of the firm in his books, and to write "partner" after each personal signature. A partnership may consist of not more than ten partners if the business of the firm is that of bankers, and of not exceeding twenty partners in any other business. Firms with a larger number of partners come under the *Joint Stock Companies Acts.*

It will be well to obtain from a firm, on the opening of an account, particulars as to the capital of the firm, the proportion in which the various partners contribute it, and the extent and nature

* As to minors who are partners, see page 59.
See also Registration of Business Names Act, 1916.

of their private means. If there is any borrowed money, it is desirable to know whether it is lent to the firm or to an individual partner, and on what security. If lent to the firm it is, of course, a liability of the firm; but if lent to a partner himself it is a liability of his private estate only, and does not rank upon the assets of the firm in case of failure. After all the firm's own debts have been paid in full, the surplus is allotted to the partners' private estates rateably to their contributions to the capital of the firm, and out of this the private debts must be liquidated.

It would save much dispute if all partnerships were entered into by deed or in writing; but unfortunately many are merely verbal arrangements. However, a banker is not bound to know the conditions of the partnership as between the partners; and a person once having held himself out to be a partner, cannot rid himself of the liabilities of his firm, until he has given notice to each creditor of the termination of the partnership, and if the partnership was limited to a certain period, it must be shown that such was known to the creditor. This notice need not be in writing, and it is not necessary that it should be gazetted to bind a creditor. It is sufficient that it can be proved that he was aware of the dissolution, however it came to his knowledge. Death or bankruptcy terminates the liability of a partner in respect of all contracts entered into by the firm after either of those events.

Every person held out as a partner is liable for all the firm's debts contracted in the usual course of business, to the full extent of his means, and the creditor is entitled to look to all the partners for repayment, notwithstanding any private arrangement between the partners themselves.

Though the partnership deed prohibits it, a partner dealing with bills in the partnership name and in the ordinary course of business, binds the firm as far as outsiders are concerned; but if a banker is instructed not to honour the signature of any individual partner on behalf of the firm, he must not do so, and he incurs no liability for refusing it. As to Infant Partners, see Minors, page 59.

Any partner may borrow for the firm on its credit, sell or pledge its goods, enter into simple contracts in the usual course of business, give discharges for payments, and perhaps give an equitable charge

on its real estate, though a legal mortgage or any other deed must be executed by each individual partner interested in the property.

If a firm is wound up, its assets are thus to be divided:—1. In payment of preference claims. 2. In payment of general creditors. 3. In payment of loans by partners, who cannot come into competition with general creditors. 4. In payment to the partners, *pro rata*, the capital due to them, which becomes part of their separate estates. 5. Any residue is divided in proportion to their share of the profits. Separate estates are distributed in the same manner, the partnership not being able to prove on the separate estates in competition with private creditors, unless the individual partner has had a distinct business apart from that of the firm, and the debt has arisen in the usual course of business, or unless there has been fraudulent conversion of partnership property without knowledge or subsequent condonation by the other partners.

If a person makes contracts with a partner on behalf of his firm, knowing at the same time the other partners have disclaimed liability on such contracts, he cannot make them responsible, nor can he if aware that the contracts are beyond the partner's authority or in fraud of his co-partners.

Transactions to bind a firm must be apparently in the interests of the partnership and for its business, therefore a banker should be wary in receiving visibly partnership money, bills, or property in payment of private debts.

If a customer of a firm stipulates with a partner for special advantages, in consideration of an agreement for the private benefit of that partner, the firm is not liable on any business done in pursuance thereof, and if a partner improperly makes use of trust funds, his co-partners are not liable, if they did not and could not reasonably be expected to know of the breach of trust.

A firm may select any name or style under which to carry on business, but once established, no other firm in the same line of business may adopt a like or similar title so as to be likely to deceive. If a firm trades under the sole name of one of its partners

it will be desirable to scrutinise any transactions which do not appear on the face to be really for partnership purposes. It is not now necessary to sue a firm in the names of its partners; it can be sued in its partnership name.

Dissolution of Firm.—A partnership may be dissolved, 1st, by notice of dissolution; 2nd, by death of a partner; 3rd, by bankruptcy or outlawry of a partner; 4th, by order of Court for reasonable cause shown. Whenever a dissolution takes place, if the banker desires to retain a lien on the retiring partner's estate, he should stop the firm's account and require the continuing partners to open a new account, and to pass all future transactions through it, giving him authority to charge to it all outstanding cheques and charges. He cannot open a new account without their authority, though he can stop the old account. If he does not stop it, every payment to credit goes to reduce the debt of the old firm, whilst every charge to debit forms a debt of the new firm, no matter how the daily balance may run.

On the retirement of a partner the banker should ascertain what amount of capital will be withdrawn from the firm, and how and when it is to be paid, and whether the articles of partnership establish a lien over the freehold, leasehold, and copyhold partnership property in his favour, as no subsequent charge would override this.—*Hall* v. *Hall*, Law Times Journal, 25th August, 1894. He will consider how the firm can stand this draft upon its resources, not forgetting that though the repayment may be spread over some years, what was capital available for payment of the debts of the firm has become a debt itself, and a liability ranking with the trade creditors of the new firm.

If new partners are introduced and a banker decides to accept the new firm for the old firm's liabilities, he must get the new partners' declaration that they accept this liability, or they will not be responsible. He should, therefore, get them individually to sign the order to transfer the account of the old firm to the new firm, and to charge to it all dishonoured bills, outstanding cheques, &c., &c.

If the style of the firm is changed it will, and if not changed it

may, be necessary to have a fresh deposit of any securities or guarantees lodged against advances, but this will depend to some extent upon the form in which the documents are drawn out.

Although it may be desirable to stop an account on the retirement of a partner, it is not necessary to refuse payment of cheques or bills signed by him in the partnership name before, but presented after his retirement. If the position of the account is satisfactory to the banker, and they appear to be legitimately drawn, these should be paid, unless he has been ordered to refuse them.

The estate of a deceased partner is not liable on contracts made or other partnership liabilities incurred after his death, even though the creditor was unaware of it, but it is liable for those made during his life whilst he purported to be a partner.

A surviving partner is entitled to deal with the partnership property standing in the firm's name, and can give a good discharge for all payments made to him in good faith.*

Limited Partnerships.—Under the Partnership Act, 28 & 29 Vic., c. 86 (Bovills Act), a loan upon a written contract, whereby in place of interest a share of profits is to be paid to the lender, does not make the lender a partner; but in case of failure he cannot claim any repayment as regards these particular loans, until all the ordinary creditors are paid in full, though he ranks with them for any other loans he may have made at a fixed rate of interest.

To come within the protection of this Act the advance must be clearly a loan, and the lender must not interfere with the conduct of the business in any way.

The Act also protects a servant remunerated by a share in the profits, or a widow or child of a deceased partner receiving a portion of the profits by way of annuity.

If, however, the contract for the loan provides that the lender is to share losses, he *may* be held liable as a partner.

Limited Partnerships Act, 1907.—Under this Act one or more persons may join a firm as limited partners. They can take no part in the management, but may share profits. Their liability is limited to the amount of their contribution to the capital. The

* Bourne *v.* Bourne, 1906.

agreement must be registered at the office of Joint Stock Companies, and the register can be inspected on payment of a fee. There must be at least one member with unlimited liability.

Trust Accounts.—Bankers, as far as possible, endeavour to avoid opening accounts in the names of trustees, as trustees, preferring to have them as ordinary joint accounts, without any reference to any trust; but although an account may be thus opened as a joint account, if it comes to the banker's knowledge that it is actually a trust account, he cannot evade any liability attaching to such an account. It is not incumbent upon him, or even desirable for him to know the terms of the trust, and he need not ascertain who are the appointed trustees, except where transferring the balance of a deceased customer's account. He can accept the representations of the persons opening the account, leaving it to any aggrieved person to settle his claim with those purporting to be trustees. If, however, he knows the account is actually a trust account, he should insist upon all cheques upon the account being invariably signed by all the persons represented to him as custodians of the money; for trustees' powers are joint, and unless specially and explicitly empowered by the deed of appointment, they cannot delegate any of their powers, even to one or more of themselves; all must sign to give an effectual discharge. There is but one exception to this rule—trustees may delegate to a portion of their number the power to distribute the income of the trust; but it is not desirable to encourage this exception.

Having secured the signature of all known trustees, it is not necessary that the banker should concern himself as to the mode in which the money withdrawn is appropriated, though of course he must not permit what he knows to be a clear misappropriation of the trust-money, as where trustees transfer money from a trust account to pay off their private debt to the banker.

If a trustee pays trust-money into his private account, the persons interested therein can establish a charge upon it, but not so as to prejudice the position of a banker who was unaware of the nature of the credit. A trustee does not lose his right to deal with the trust funds by reason of his bankruptcy, unless he be a Trustee in a Bankruptcy. If a trustee dies, his death should be proved by the

production of a certificate of his death or burial, which may be supplemented, in cases where the banker has any suspicion of fraud, by a statutory declaration identifying the person named in the certificate with the trustee. It is not necessary to see his will, as the surviving trustees have full right to the trust property. Of course, under no circumstances can a trust account be held as a set off against a private account.

Charitable Trusts, &c.—In these cases the banker should be furnished with copies of the resolutions appointing a treasurer, and stating in what manner cheques are to be signed, and the account should be opened as "A. B., Treasurer to the C. Trust," or "A. B., C. D., and E. F., Joint Treasurers." The treasurers are not personally liable in these cases.

Official Liquidators, Assignees, &c.—The banker will derive his knowledge of their appointment from the *Gazette*. If more than one is appointed, at least two must sign cheques, &c., unless the shareholders or creditors decide otherwise, and the banker will see from the order of appointment the extent of the powers granted, and the limitations thereto. If a committee of inspection is appointed, he should see how far he will require the committee's sanction to the trustees' acts. In the case of trustees in private liquidations, the appointment of trustee and the conditions imposed upon him will be proved by the deed of assignment.

Receivers and Managers appointed by the Court of Chancery are personally liable. It will be well to take legal advice as to their powers.

Companies' Accounts.—When a company opens an account, its certificate of incorporation and, if a public company, its authority to commence business should be exhibited, and a copy of its memorandum and articles of association filed for future reference. From these will be gathered the regulations as to the opening of a banking account, and the way it is to be operated on,* and as to the power of the company to borrow money, or overdraw its account. These regulations should be embodied in a resolution which, on being passed by the directors and duly authenticated (say signed by the chairman and countersigned by the secretary, and, if necessary, sealed with the official seal), will serve

* See pages 7 to 10 as to signatures.

as the banker's authority for dealing with the company. These resolutions will be good, as far as the banker is concerned, even if they have been irregularly passed, so long as they are within the powers given by the memorandum and articles. It is very necessary to see whether they give power to draw, endorse, and accept bills, and in what form. The authority should be as explicit in the powers it gives as one given by an individual in favour of an agent.

The articles of association of any joint stock company may be inspected by any person at the Registry of Joint Stock Companies for the division of the kingdom in which it is registered (*i.e.*, in London, Edinburgh, or Dublin), on payment of one shilling.

If a public limited company continue business when there are less than seven members, each member aware of the fact is liable for all the debts contracted by the company whilst there are less than the statutory number of members. Every member of a limited company is liable to the extent of the uncalled amount on his shares for one year from his ceasing to be a member, for all debts incurred whilst he was a member, in the event of, and to the extent of, his transferee being unable to pay the calls made.

A *private* limited company may consist of two shareholders.

It is necessary to carefully study the "memorandum," as it limits and controls the "articles."

Corporations.—Unless these have special authority by their constitution they cannot make or endorse bills. The authority to honour the signatures of their nominees usually should be given under the common seal, and usually, unless all the cheques are signed by three members of the finance committee, there should be a schedule of the cheques to be paid, which should bear these three signatures.

Bankers cannot exercise the right of "set-off" in public corporation accounts.

Poor Law, Highway Board, and District Council accounts should be opened by a formal resolution appointing the treasurer, and cheques should be signed by the chairman and two members of the board, and countersigned by the clerk or by his substitute, who must be duly authorised. All their cheques must be

made to order, and per procuration endorsements are not accepted, unless guaranteed by a bank, and not always even then.

Friendly and Building Societies.—Their accounts must be kept in strict conformity with their respective rules, which must have been registered by the Registrar of Friendly Societies.

Land Societies sometimes are established under the *Joint Stock Companies Act*, and sometimes under the *Friendly Societies Act*. Great care must be taken, on the opening of an account, to ascertain under which Act the society is constituted, and whether its regulations conform to law.

Bankers' Charges, Pass Book, Acquiescence of Customer in Entries.—A valuable case for reference on these points is *Spencer* v. *Wakefield*, Times Law Reports, No. 10, Vol. IV.

Balance-Sheets.—The investigation of a balance-sheet may be taken as a desirable preliminary to the granting of any accommodation to a firm, and requires much care, for many men, either from incapacity or deliberate attempt at deception, will make most misleading statements of their position. A balance-sheet prepared by a public accountant can be more depended upon, but even there it must be remembered that he can only deal with the accounts set before him, and if books are deliberately and systematically falsified, he may easily be misled. A balance-sheet prepared in the handwriting of a customer, or signed by him, will enable an action for fraud to be brought against him, if it can be shown to have been a deliberate misrepresentation of his position.

In respect of capital it is desirable to see what relation it bears to the total liabilities disclosed in the statement, and in what form it is invested, whether in realisable assets or only in margin between the mortgages or other charges on the property, and the estimated actual value of it; the banker should then ascertain whether it is actually the customer's own money, as sometimes loans to the individual, or even to a firm, are wrongly set down under this head. It may be desirable to enquire whether there are any mortgages, acceptances, or settlements, guarantees or other charges to which the assets are subject, although they may not appear in the account, for, strange as it may seem, cases have been known where, with hardly an intent to defraud, mortgages have been left out on one side, and

the mortgaged property on the other, and in one case, at any rate, a customer did not insert the acceptances he had signed, justifying his action by saying that he had not taken as an asset the goods for which they were given. In firm's accounts it will be well to see if the capital is practically reduced by partners having overdrawn their private accounts.

If there are loans to the firm (already the difference between loans to a firm and loans to any of its partners, as individuals, has been pointed out), the banker will want to know if they are secured, and how, whether by charges on the firm's property, or on the partners' private estates, or by the aid of friends or relatives; also the conditions for repayment, whether they are demand loans or repayable at a fixed date.

The character of the accounts owing by the firm deserves scrutiny. "Accounts owing" sometimes includes mortgages and cash advances, as well as trade debts, although they stand in very different categories in a banker's valuation.

Looking at the assets, their general character must be noted. What amount is fixed in land, buildings, machinery, and those articles commonly known as fixed stock? How does this total compare with the total capital of the firm? Have they fixed all or more than all their own capital? If so, they are dependent on their credit for their working capital. Are the properties mortgaged? If so, what proportion does the mortgage bear to the value of the property? Are the mortgages only over the freehold, or are they registered as bills of sale, thereby covering the loose trade machinery?* Are the works and machinery properly and regularly written down in value, to provide for depreciation? Is the value set upon them reasonable and moderate, remembering that the value of works and machinery valued "as a going concern," is a very different thing from their value at auction prices?

Is goodwill taken as an asset, or any other such fluctuating item, which only too surely vanishes if an estate has to be realised?

Are there any assets with a contingent liability upon them (shares not fully paid up, &c., &c.), and what probability is there of such liability becoming an actual claim on the estate?

* See also page 97.

Are the assets readily convertible, and what proportion do the liquid assets (cash, stock in hand, accounts owing to the firm, and such items) bear to the open liabilities of the firm? Is the stock saleable; on what basis is it valued, cost or market value? What is the character of the accounts owing to the firm. Are they all good debts and trade debts, are the amounts well divided, or does the firm depend (a most unhealthy and dangerous state for any firm to be in) on the solvency of one or two large customers?

If the firm rents its works, it may be desirable to ascertain the rental, the duration of the lease, &c., &c., particularly if it also rents the machinery, because then the rent becomes a heavy item, and the right of distress by the landlord, if only for a single year's rent, may make a serious hole in the assets available for division among the general creditors.

In dealing with the Profit and Loss Account, it is desirable to know if liberal provision is made for bad debts; if depreciation is allowed for, in case it is not provided for before the transfer to Profit and Loss Account; whether interest on capital is deducted before the profit is estimated; whether the partners' expenses are less than, or in excess of, the profit, &c., &c.

These are some of the points which a banker would like to be informed upon, when he is required to give credit to a firm, and the enumeration of them will show how misleading the mere statement of a firm's capital may be.

Advances.

No prudent banker will allow his bank's stability to be dependent upon the prosperity of any one or two firms, and, therefore, he will take care that no single advance he may make shall be larger in amount than he could support if it became a bad debt. Advances out of proportion to a bank's capital, even if fully secured, are to be avoided, unless the security is of such a character that its immediate conversion into cash at any time, if required, is beyond possibility of question. Neglect of this precaution has caused the failure of more banks than any other banking indiscretion.

When a banker is requested to grant accommodation he will desire to know the position of his customer, and if at the opening of

the account he has acquired the information previously suggested, he will be much better qualified to deal with the application. Apart from what his customer may tell him, he will have noticed his manner of doing business, gathered some idea of his reputation among firms in his own trade, and generally satisfied himself as to his customer's thrift, ability, industry, and integrity. Presuming that these enquiries have inspired confidence, he will wish for information as to the amount of advance desired, the purpose for which it is wanted, the length of time for which it is required, and the security, if any, which is to be given for it. It will be more than ever necessary if the advance is unsecured that he should thoroughly understand the character of his customer's business, or he may be much misled by the appearance of his account. Agents may be poor, and yet keep up a very satisfactory account by means of their principals' moneys. Some firms buy on credit and sell for cash, and their accounts therefore give no indication of their position. Some tradesmen receive large quantities of goods on sale or return, and the "show" in their shops may therefore be very far from a true representation of their position.

Moreover, to provide against attempts at deliberate fraud, it must be remembered that marriage settlements, even of visible goods and chattels, if made or agreed to before the marriage, do not require to be registered as bills of sale. A marriage settlement, made after marriage, is void if the maker becomes bankrupt within two years, and is voidable until ten years from its date, if it can be proved that at the time of making it he was not able to pay his debts, without the aid of the property comprised in it; but after it has been in existence ten years it is indefeasible.

Banking advances should be for commercial purposes, as an addition to working capital. Advances employed as fixed capital are more of the character of mortgages, and should only be granted by a banker to a very limited extent, if at all.

An overdraft granted for a specified time may be terminated earlier upon notice from the bank to the debtor.—*Rouse* v. *Bradford Banking Co.*, 1894

The case of *Gilbert* v. *Gonard*, referred to in "Emden's Digest for 1885," p. 475, may be of interest to lenders.

The decision is stated to be that where money is advanced by way of loan for the purpose of being applied for a specific purpose, and on the undertaking of the borrower so to apply it, in the event of the bankruptcy of the borrower before the undertaking has been fulfilled, the lender is entitled to follow and recover the money, in the same manner as if it had been in terms a trust fund.

Whenever an advance is granted, particularly if unsecured, it should be clearly understood that the banker reserves to himself the right to recall or cancel it at any time in his discretion.

In case the banker is asked for assistance to tide over a temporary embarrassment, he will want to know the full amount of present and prospective liabilities, so that he may judge whether the assistance asked for will clear the way, how it is proposed to repay the advance, and whether the estimate of his customer allows for those uncertainties of trade which are so certain to arise. In connection with this his own knowledge of the state of trade generally, and of the applicant's branch of it in particular, will assist him in estimating the safety and propriety of his granting aid.

It may come to the banker's knowledge when, or after making an advance, that his customer is under liability as a shareholder in some company tottering to its fall, and it will then be of advantage to remember that he can himself, or by an agent, inspect the return of shareholders kept at the Registry of Joint Stock Companies for a small fee (the charge at the Registry is 1s. per inspection, and a certified copy of any part of a registered document costs 6d. per folio), and thence ascertain his precise holding up to a comparatively recent date.

If for some special reason, and relying on his integrity and ability, a banker grants assistance to a man of small capital, he may wisely require him to deposit an assurance policy, but care must be taken to see that this is not already settled on his wife or children.

If the advance is applied for by a firm whose principal establishment is in the Colonies or abroad, the banker will not fail to take into consideration this fact. In case of disaster he would have more or less difficulty in recovering his money, and in some cases would be placed at a disadvantage, as compared with local creditors. If

the applicant is a farmer, his position with regard to his landlord as to payment of his rent is an important consideration.

Married Women, if married since 1st January, 1883, have for most business purposes the rights of spinsters, and can bind their own property, but their husbands are in no way responsible for their personal debts. A woman, married since that date, may have a marriage settlement, simply giving her a right to the income, during life, of the property held in trust. It is prudent to have all securities given by a woman attested by her own solicitor, and particularly those of a wife for her husband.

The Married Women's Property Act, 1893, makes the separate property of a married woman liable for her contracts whether she had or had not separate property at the time she made them.

A married woman carrying on business is now subject to the Bankruptcy Acts as though a *femme sole*.

A husband is responsible for the ante-nuptial debts of his wife to the extent of any property he may have obtained through her.

By the Bankruptcy Act of 1914, if a married woman has made loans to her husband for the purpose of his business, she cannot prove on his estate for them in competition with his general creditors, and the creditors can follow any fraudulent investments in her name of her husband's money. She can, however, prove in competition with other creditors for money lent to him for private purposes, and also for money lent to a firm in which he is a partner. If an executrix, she has the "right of retainer.' A husband's loans to his wife are similarly postponed to other creditors.

The Statute of Limitations applies as between husband and wife.

Agents.—An agent should not be allowed to overdraw his principal's account, to negotiate a loan on his account, or to pledge his securities, unless his authority gives him explicit power to do so. But if he has power to borrow, any limitation (in amount) does not affect a *bonâ fide* lender unaware of it.

Deceased Debtor's Representatives.—Although the account of the deceased may have been unwisely transferred to his representatives, the banker is entitled to retain the securities deposited by him as against this balance, but unless the will gives them power

to borrow, it is questionable whether these securities could be held against advances made to the representatives, in opposition, for instance, to the claim of the heir-at-law to the real estate, though the executors or administrators would themselves be personally liable for advances made at their request and on their account.

Though such representatives cannot pledge the trust estate generally, they may, under certain circumstances, borrow on specific securities without being authorised in the will, though not in direct opposition to its provisions; and it has been decided that it is not irregular for a banker to advance money to one of two executors if he was led to believe it was for the purposes of the will.

Where executors and trustees are empowered to realise real estate, they have power to pledge a part of it or to pledge a specific personal asset as security for a loan, but for any debt not specifically secured, or if the pledged security does not prove sufficient to repay the loan, they alone are personally liable, not the estate. To avoid dispute it may be well to take the personal guarantee of executors or trustees for any loan made to them.

Partnerships.—It is worthy of note that partners may convert any portion of partnership property into the personal property of any of the partners, and *vice versâ*, and if the transaction has been made in good faith it binds creditors even in bankruptcy, if the conversion has been completed before the failure.

Receivers and Liquidators of Estates are personally* liable for advances made to them, and they cannot bind the estate unless their appointment empowers them to borrow, in which case care must be taken that the transaction is in strictly legal form.

Companies, Societies, and Corporations.—It is necessary to see that their regulations and the laws under which they are formed give them authority to borrow, or to make themselves liable upon bills. A trading Company has implied authority to borrow even if no express power to borrow is given in its memorandum and articles of association.—Law Times Reports, 1892, p. 188. A company or society may have power to borrow to a limited extent, but if the directors borrow in excess of its borrowing powers, the company

* Court of Appeal, December, 1894, but see *in re* Boynton Hoffman *v.* Boynton, 12th Feb., 1910.

is not liable for the excess, though obtained by false representations; the directors who make the misrepresentation alone are liable, but see *Mills* v. *Mid-Wales Motor Co.*, Financial Times, 23rd May, 1916. A building society, having power to borrow, cannot give an equitable charge on any of the mortgages it holds, in favour of particular creditors. If a society has not by its rules power to borrow it is very dangerous to make advances to it. In every case the regulations of the company or society as to borrowing should be strictly followed or the advance may be held *ultra vires*.

Highway and District Boards have no power to overdraw their banking accounts, and such overdrafts cannot be recovered at law.

Limited Companies.—Their powers to borrow and to charge any of their assets * are strictly defined by the memorandum and articles of association, which must be carefully studied.

All charges ought to be entered in the company's register of mortgages, and most charges *must* be registered in the Registry of Joint Stock Companies within 21 days from execution, or they will be valueless.

Any person for a small fee may inspect the register at the Registry, and therefore can see what charges are in existence.

Scotch creditors may obtain a preferential charge on the uncalled capital of shares held by Scotch shareholders.—Law Times Reports, 1892, p. 433.

The Working of an Account.—Having granted an advance, a banker will keep a careful eye on the customer's account to detect the first signs of weakness. If the customer always appears to be at the full extent of his limit, if he takes longer credit, if he provides for his acceptances at the last minute, or retires them by telegram, or with noting, if he tenders bills drawn upon inferior firms, and assists the acceptors to meet them at maturity, the banker will have his suspicions aroused, and will take what steps he can to make himself safe.

Limitations, Statute of.—If for six years no acknowledgment of a simple contract debt (as on an account or on a bill of exchange)

* "Assets" will include uncalled capital. (*Page* v. *International Agency*, Law Times, February 2nd, 1893. Property will not.

has been made, the debtor may avoid payment of it by pleading this statute. To prevent him from availing himself of it a clear acknowledgment of liability, from which a promise to pay can be inferred, made by the debtor *direct* to the holder, not through a third party, must be proved. If the debtor voluntarily pays interest on the debt that is a sufficient recognition of it; but it is not sufficient that the banker should charge interest in his own books. On notes payable on demand the statute begins to run from the date of the note. On guarantees the statute commences to run from the date on which the last payment was debited to the account* or on which demand for repayment is made of the guarantor. If a debt is only partly secured, *i.e.*, if the securities when realised do not cover the debt, the statute runs as to the deficit from the date of the original debt, not from the date of the realisation of the securities.—Court of Appeal, *re* McHenry, 72, S. J., 616. If more than one person is liable, only those who have acknowledged their liability are debarred from pleading the statute. The statute does not bar the right of set-off and does not operate to free securities.

If debentures are held as security, the stipulated interest should be collected from time to time to avoid this statute.

Set off.—In order that a banker may exercise the right of setting off any payment due by him to his customer, against any debt of his customer's to him, they must both be legal claims, not merely equitable, and they must be strictly mutual. He cannot set off a partner's credit balance against a balance due from his firm; but if a man trades without a partner as a firm, all the accounts in which he alone is interested may be consolidated.—See also pp. 59 & 62.

Securities.

Speaking generally, a banker has a lien upon all banking articles in his hands as a banker, though not on those he holds as guardian (as things left for safe custody), or which he holds as agent (as bonds entrusted to him to obtain the interest on, or to obtain new coupon sheets, or to exchange for new securities). Anything which is in his hands to sell or to collect he has a lien on, and this lien avails over bills or notes, or other documents transferable by delivery even if they are trust property, if at the time they were

* See page 89.

placed in his hands he had no notice or knowledge of their fiduciary character. If, however, they require the execution of a deed to transfer the property in them, the banker can maintain no lien on them if the trustee has fraudulently obtained advances on them.

Unless securities have been deposited specifically to cover certain stated advances, the banker can hold them against any and every claim he may have against the person on whose behalf they have been pledged; but if they are given against specific advances they can only be held against those, and when the liability for which they were pledges has ceased, the banker must return them. If, however, the security has been realised, the banker may, perhaps, retain the surplus proceeds against other liabilities. (Jones *v.* Peppercorn, 1908.) Much care, therefore, should be taken in the making of arrangements as to security, and the memorandum of deposit should clearly set forth whether the securities are for general liabilities or for special ones. Where several distinct securities, deposited by several individuals, are held for one account, if one of the depositors thereof dies, the account should be stopped, and, by arrangement with the customer, all transactions should pass through a new account until fresh arrangements are made, after which operations on the *old* account should be resumed, but only if the memorandum of deposit in each case allows the substitution of securities. In valuing securities in bankruptcy, a creditor may lump them and assess them as a whole.

Completion of Title.—Official Receivers are instructed to make a substantial charge where their assistance is required to convert an equitable into a legal title to securities.

Collateral Securities.—Securities belonging to, and pledged by, an individual or by a firm to secure its own account, have in case of failure to be realised, and the full amount obtained from them deducted from the debt due to the banker. He can only prove on the estate for the balance of the debt remaining unpaid; but if an individual partner, or any person not a partner, give security not being the property of the debtor, this is termed collateral security, and the banker may prove on the debtor's firm for the full amount of the debt. If he does not receive payment in full from the estate he can claim from the surety the deficiency, so far as the deposited

security will cover it. It is desirable that the instrument establishing the security should distinctly renounce in favour of the banker all right of proof upon the estate of the principal debtor. As securities in private partners' names often turn out in case of failure to be the firm's property, it is not well to calculate too certainly on partners' securities being collateral. In obtaining collateral security there must be no misrepresentations as to previous dealings, or as to the present state of the account. Any such deception or suppression of the truth will vitiate the security. A surety is entitled at any time to know the extent of the total liabilities of the person he is bound for to the bank, and the manner in which his account works, but he is not entitled to see the details of it.

Realisation of Securities.—Securities, whether personal or collateral, should never be realised until after demand for repayment of the amount due, and neglect of the customer to repay. If the customer is bankrupt, his trustee should be consulted before any securities belonging to the bankrupt are sold. Proceeds of collateral securities should be put to a separate account.

If a banker neglects to deal promptly and properly with securities received from his debtor, he may lose the advantage of any collateral security he holds, though this will depend to some extent upon the terms of the memorandum which accompanies the deposit of the collaterals.

If the surety pays off the whole of the debt, he is entitled to take all the securities held by the banker against the account, but the banker should advise all interested in the account before giving them up.

If collateral security is held, the banker should be very careful in accepting any security from, or making any agreement with, the principal debtor by which payment of the debt is deferred. Unless the surety assents to such an arrangement, he will be released from his liability, but a banker does not release his surety by simply delaying to take action against his debtor.

Where collateral securities are received, through the hands of the debtor, and not direct from the surety, in the event of their

having been given up and again deposited, the banker should make sure that the re-deposit is made with the sanction of the surety.

Memorandum of Deposit.—The wording of the memorandum setting forth the conditions upon which securities are pledged with a banker is of very great importance, particularly in the case of collateral securities. The banker will be furnished by his solicitor with a form for general use, but there are times when the banker may have to write out one without reference to his legal adviser, in which case the following points will be worthy of notice.

The memorandum should be dated and must be signed by the depositor of the securities, which, of course, must be his own absolute property, and his signature should be witnessed by some reliable disinterested person, or by a bank official. It should set forth the name of the person or firm on whose behalf they are deposited. If for a firm, it should provide for changes in its style or constitution by such words as "of whomsoever the said firm may from time to time consist." If the security is given to a private banking firm, a similar clause should be inserted in its favour. Sometimes it is advantageous to take security to cover advances "to A. B., or to the said A. B. in partnership with any other person or persons." It should contain a clause undertaking to repay the banker, to the extent of the value of the securities, amounts owing to him by the principal debtor, within a fixed time after demand, the demand being at the option of the banker on the failure of his customer to repay the amount owing, whether that failure to repay should be owing to his death, lunacy, failure, suspension, or any other cause whatsoever. Unless it is intended that the full value of the property deposited is to be treated as security, the memorandum should set forth the amount to which the security is to hold good, and if it is collateral it should provide that the banker is to retain the right to prove upon his debtor's estate for the full amount of his debt, without any deduction of the amount which he may realise from these securities. The security cannot be held for a larger amount than is specified in the memorandum of deposit, though that amount may be increased by an additional agreement. It should cover liabilities by way of loans, overdrafts, or debts incurred in any way by

the customer, including liabilities arising upon bills of exchange, whether as drawer, acceptor, or endorser. It should provide that the security is to be a continuing security, and it is to hold good notwithstanding any statement or settlement and re-opening of accounts between the bank and the debtor. It should allow of additional advances, other and additional securities, and the substitution of securities. It should declare that it is in addition to, not in substitution for, or concurrent with, any other securities. It should state the manner in which the liability of the depositor is to be revoked. It should provide that the security is to remain valid in case of the death of the depositor, until his representatives give notice of its withdrawal. It should allow the bank to stop the debtor's account, in case of the death of the surety, or at any other time, to open a new account, and to apply future payments to credit of the new account without prejudice to the banker's claim on the security. Any bills, &c., covered by the guarantee, if dishonoured, will, of course, be charged to the old account.

If the surety notifies his intention of terminating his liability, the banker will at once inform his customer, and arrange with him for the opening of a new account through which all new transactions may pass, until the old account is satisfactorily provided for. (The customer must indicate on all payments to credit that they are for the new account.) The banker will acquaint the surety with the amount of the liabilities of his customer, both on loans and advances and also on bills of exchange, and remind him that he holds his securities bound until those liabilities are discharged.

It should give the banker the right to appropriate any funds or other securities in his hands to the repayment of whatever liabilities of the debtor he chooses, and to claim upon the securities to which the memorandum refers for the balance.

It should empower the banker to vary in any way the agreement between himself and his customer, to give him time, to accept a composition from the principal debtor, or from any person jointly liable with him, to stop the account for which the security is given, and to open fresh accounts without prejudice to the security.

Finally, it should declare that the securities deposited are the

actual personal property of the depositor, free from any charge, lien, or trust, other than those appearing on the face of them, and the depositor should covenant for himself, his executors, administrators, and assigns.

In the case of companies and societies, securities should be pledged and given up in strict conformity with the requirements of their rules and regulations.

It need hardly be said that in all cases it is not possible to obtain such a complete security as would be given by the memorandum sketched, but it will be easy to see which condition can be dispensed with in any particular case, though care should always be taken to have the security described as "a continuing security," or it may be held only to apply to the original loan. Thus, if a banker advances to a customer £1,000, the customer may, say in a week, pay to his credit sums aggregating £1,000, but concurrently, he may draw cheques upon his banker for £1,000, which, being paid, make his daily balance keep steadily debit about £1,000. At the week's end he stands Dr. £1,000, and if the security is a continuing security, the banker holds it against the outstanding balance, but if it is a *non*-continuing security, in law, the £1,000 the customer has paid to his credit went to pay off the original advance, and the cheques the banker has paid during the week are a new advance, for which the security is not liable. This rule as to the appropriation of payments (known as "Clayton's rule") is one which a banker should carefully keep in mind, not only in connection with securities, but wherever there has been, through death or any other cause, an alteration in the *personnel* of the parties jointly liable to him on any account.

Guarantees.—If a guarantee is proposed as security for an account the banker will consider whether the proposed guarantor is in a position to promptly pay the amount of the guarantee if called upon to do so, and whether he would be crippled in his resources by such payment. Above all, it is desirable that the banker's information as to the guarantor's means should be precise. A person may live in good style, but spending the whole of his income, and that dependent on a life interest, an annuity, a pension,

or a marriage settlement. In such a case much difficulty would be experienced, and much inconvenience caused, in procuring payment.

However good a guarantor may be at the time he places himself under obligation, the banker will not fail to keep himself posted up as to his position, from time to time. In addition to the misfortunes which may befall any man, whether in business or living on his private income, if a guarantor determines to be a rogue, he may by deed of gift, marriage settlement, or other subterfuge, dispose of his property and deprive his guarantee of its value.

If a surety fails, and the banker desires to claim against his estate on a guarantee, he should call in the advance, and in default of repayment he will be able to prove on the surety's estate.

Who may Guarantee.—An individual may of course make himself responsible under a guarantee, but one partner cannot bind his firm by giving one, unless it is the usage of his firm and of their trade to give guarantees, no, not even though it should appear reasonable in this particular instance that the firm should do so. To avoid disputes, therefore, it will be desirable that a guarantee by a firm should be signed by every partner in it, and that in case of any change in the firm a new guarantee be obtained. The guarantor, like any other surety, should covenant for himself, his executors, administrators, or assigns.

If a limited company give a guarantee, its memorandum of association and articles should be examined to see if it has power to do so.

If several persons unite in a guarantee, they may undertake the liability severally, jointly, or jointly and severally. If severally, any of the guarantors may be sued for the full amount of the guarantee; if jointly, they must all be sued together; but if jointly and severally, they may be sued in whichever way the banker prefers. If a joint and several guarantee is prepared, and one of the proposed guarantors refuses to sign, it is said the others who do sign are liable upon it; but, nevertheless, it is the safer course to have a new guarantee prepared, containing only the names of those whose signatures will be affixed.

If any one of the several sureties gives notice of his desire to

be released, the banker in acknowledging it should expressly reserve his rights against the others, and it will save disputes if he advise his customer and the other sureties, and stop the account until fresh arrangements are made. This course should be adopted if the death or lunacy of any of them should come to the knowledge of the banker, unless the instrument provides for the continuing liability of the surety's estate. The representative of the surety should be advised of his liability.

A promise to be liable for a debt for which another is already or is to become liable, irrespective of whether that other fail to satisfy the liability, is an indemnity and not a guarantee, and need not be in writing.—*Guild* v. *Conrad*, 1894.

Form of Guarantee.—A guarantee should be on a sixpenny agreement stamp, if it is a simple contract only under hand. If it is a bond or deed under seal it must bear the usual *ad valorem* stamp. It must be an actual guarantee, not a mere undertaking to give a guarantee: "I do not object to give a guarantee" is not a guarantee in law. If under hand it should state the consideration, and if it is to secure advances already made it must so provide.

It should give to the banker right to prove on the debtor's estate for the full amount of his debt. The following form will do that: "I will be liable for £250 of the ultimate amount which A. B. shall owe you at any time until I withdraw this guarantee by notice in writing."

A banker retains the right of proof for the full amount of his claim though he may have given up the guarantee against payment by the guarantor.—*Yorkshire Banking Co.* v. *Thomas*, Q B., 20th March, 1896. It is prudent to reserve claims against other parties and right of proof in the receipt. See *Mackinnon's Trustees and Bank of Scotland*, Law Times, 27th February, 1915.

If the same guarantor signs more than one guarantee for the same person, each succeeding guarantee should refer to those previously signed, and should declare "this is an addition to, and not in substitution of, my guarantee for £ dated ."

If the guarantee is for a stated period, and at the expiration thereof is renewed, the renewal endorsement should bear a new stamp, and be signed by all the guarantors.

At the end of the fixed period the account should be stopped, and notice given to the guarantor of the amount for which he stands liable, but although for a fixed period the guarantor may terminate the guarantee earlier, unless he has renounced the right so to do.

If the guarantee is not stamped when signed the stamp may be impressed without penalty within fourteen days from the date of its execution. If a bond or deed, it may be stamped within thirty days without penalty. With a penalty, deeds may be stamped for a considerably longer period.

As to the general provisions which a guarantee should include, they are referred to in the paragraphs on Memorandum of Deposit; but it may be as well to recite a few things which a banker should not do, unless his guarantee specially allows them.

He should not agree with his debtor to defer payment to a future time by express agreement, nor surrender other securities known by the guarantor to be in his hands as security, nor accept a voluntary composition from his debtor, nor grant further advances and take further security. None of these things should he do without his surety's consent in writing, unless the guarantee specially allows them. The Statute of Limitations does not begin to run with respect to guarantees until the date when cause for action first arises. It runs, however, from the date of the last advance,* unless the guarantee stipulates for notice to the guarantor.

Bonds under seal.—The Statute of Limitations does not avail until twenty years from their date,† and the consideration for them cannot be disputed. One partner cannot bind his firm by deed without express authority to do so.

Post Obit Bonds are bonds the performance of which is contingent on the death of a specified person. They are good security if not tainted by fraud, and have priority over later charges.

Stocks and Shares.—When these are offered as security it will be necessary for the banker to satisfy himself as to their actual value, which is usually very different from their nominal or face value. It is not always safe to rely upon the market quotation for

* Parrs Bank *v.* Yates. Law Times Report, 3rd Dec., 1898, p. 321. See also p, 81.

† Possibly from date when cause for action first arises.

them. They may not be readily saleable, in which case the nominal value may be much in excess of the price at which they can be sold, or they may be at an extraordinary price, much beyond their intrinsic value, as measured by the income they yield, and particularly if due consideration is given to the probability of the rate of dividend being maintained in the future. If they purport to be preference or guaranteed securities, regard should be had to the amount of the stocks that come after them, and to the rate of dividend paid upon these junior stocks. In some cases the ordinary stocks have not actually been paid for in money or money's worth, and the nominal preference stocks are really the true capital of the undertaking. The cost of prior charges should also be considered.

It is desirable also to see whether the securities are fully paid up, or whether calls have been made but not paid, or can in future be made. Usually, companies reserve to themselves the right to forfeit shares upon which calls are unpaid, and as the certificates often do not indicate how much is paid up per share, and the shares may be forfeited without the certificate being returned, it is possible for a dishonest shareholder to offer the certificates of shares in a company of fair standing, which are actually of no value whatever.

Moreover, most trading companies have a first lien on their shares for any debts due by the shareholder to them, and in that case there may be no value in the certificate as a security to the banker. Further, there may be restrictions on transfer.

The company's lien, however, does not cover debts incurred by the shareholder to the company after it has received notice that he has pledged the certificates elsewhere.

In the case of the *Bradford Banking Co.* v. *Briggs*, it has been decided that though the articles of association of a company provided that the company should have a first and paramount lien and charge, available by law and in equity, upon every share for all debts due from the holder thereof, debts which became due from the shareholder after notice of deposit of the certificate of shares with a bank, cannot claim priority over advances by the bank made after such notice.

If a banker should take securities not fully paid up it may be

well to take an authority from the person on whose account they are held to pay any calls that may be made and charge them to his debit, though this is not essential where the owner of the securities and the customer are identical.

It need hardly be said that no one except the person in whose name the shares are registered, or his legal representatives, can give any title whatever to the banker to retain them.

Unless shares or stocks are transferable by simple delivery, their value as securities is lessened by the possibility of their being trust property, in which case the banker can be compelled to give them up without compensation, unless he has, before he became aware of the trust, caused them to be transferred into the name of himself or his nominee. If, however, to bearer, they are a good security to a banker who has taken them in good faith, notwithstanding the trust.

A banker establishes his lien on shares most firmly by having them transferred into his own name, but, if they are not paid up, he makes himself liable for any calls that may be made by so doing. Most large companies have adopted a general form of transfer, known as a "railway transfer," which can be obtained at any law stationers and most stamp offices ready printed, but it will be well by a reference to "Official Intelligence" to see whether the company whose shares are to be transferred use a special form before getting the deed executed. Any deed can be stamped within thirty days from its date, or from its arrival in the United Kingdom, without a penalty.*

When securities are re-transferred, great care should be exercised to see that they are conveyed to the rightful owners, or that the transfer is sanctioned by them.

Unless a transfer is registered in the books of a company it gives the banker no legal hold upon the securities it refers to. If, therefore, a banker does not immediately have them transferred he can only obtain a legal lien by giving notice to the company that the certificates have been deposited with him by the proprietor as a security, and though the company may not, cannot, take cogni-

* See Harrold *v.* Plenty, *Times*, 24th May, 1901, as to deposit of share certificate without any written charge.

sance of any trust, it is bound to take notice of such a lien, if it receives it before the bankruptcy of the registered owner of the shares. The notice must be sent to the registered office of the company, and it is desirable that the banker should be able to prove the delivery or the posting of it, as some companies will not acknowledge receipt of such communications. The advantage of taking certificates with a transfer which is not registered, and giving notice of lien, is that the banker personally incurs none of the liabilities of a shareholder. The transfer should, however, be taken in a complete form, with the transferee's name filled in, as a transfer in blank is not legally capable of completion by insertion of the transferee's name after it has been executed by the transferor.* The disadvantage is that his security, being only on an equitable charge, may be over-ridden by some trust or other legal title to the securities.—See also " Completion of Title," p. 82, and note, p. 91.

The notice of lien must be given to the company prior to the bankruptcy of the shareholder, though it has been held that where the act of bankruptcy was committed on January 27th, 1884, but the petition in bankruptcy was not filed until February 2nd, a notice received by the company on the 31st January, 1884, took the shares out of the order and disposition of the bankrupt, and therefore established the lien.

The giving of notice should not be neglected if the shares are deposited to secure a firm's account, though registered in the name of a partner, because they may be the property of the firm.

If the certificate of shares has on it a note to the effect that the certificate must be surrendered before the shares it relates to can be transferred, notice to the issuing company is not essential to take the shares out of the order and disposition of the shareholder, should he become bankrupt. Nevertheless, it is unwise, even with such certificates, to neglect to give notice.

If shares untransferred are equitably assigned or mortgaged more than once, the priority of the assignees depends on the priority of the assignments, not on the priority of the notices of the company.

If notice of lien has been given it should be withdrawn by the banker when he surrenders the certificates.

* A power of attorney irrevocable is sometimes useful.

American Railway Shares.—In these the certificate usually has a blank power of attorney at the back, which should be executed *in blank* by the person who is described as the proprietor; but it may be remembered that in some cases, when such shares are sent in for registration, verification of the signature of the proprietor is insisted on.

Moreover, such certificates are not "negotiable instruments" in law, and there may be an infirmity in the holder's title.

Debentures and Bonds.—A debenture may simply be an acknowledgment of indebtedness, therefore it is necessary to carefully examine the conditions, to ascertain its value, and whether the issuers have power to grant it, and that the total amount is within their borrowing powers.—See also Appendix.

Under a "floating charge" debenture the issuing company can deal with its assets freely so long as it is a going concern.

It is desirable to give notice of lien on debentures lodged as security, and if they have only a short time to run to have the signatures of the persons declared to be the registered owners written at the back, with an authority to engross a receipt above their signatures. If debentures are registered, the issuing company *may* have a lien on them for calls on shares in the name of the registered owner of the debentures made prior to notice of equitable mortgage.

Bearer Bonds, of the character known on the Stock Exchange, should have the serial number undefaced on the bond and on each coupon; the nominal value should be clearly expressed and not tampered with; and the date of payment should be on the coupons, unless in case of share certificates, where the coupons are merely numbered. All the unpaid coupons should be attached, particularly if any payments are in default; and if redeemable by lot the banker will do well to distinctly disclaim any responsibility in connection with the drawings for redemption.

If the coupons are not attached the bonds are not saleable securities, and then if the customer's title is defective the banker cannot retain them against the lawful owner.

Notices of Lien.—If a banker is served with notice that any person other than the depositor of the securities claims an interest

in them, and requires him not to part with them, he should at once inform the depositor and take counsel with his legal adviser.

Life Policies.—These are uncertain as securities. Their worth should never be estimated at more than the surrender value. They should be charged by deed, duly stamped, and notice of lien given to the issuing companies, with an inquiry whether any prior charges have been recorded, and a request that duplicates of notices affecting the policies may be sent to the bank. The age of insurer should be admitted by the issuers, and care taken to see that renewal premiums are paid in due time to avoid lapses.

All previous assignments must be preserved.

A life policy may be settled on the nominee's wife or family beyond the control of his creditors, but this will be apparent from the wording of the policy. Policies issued by Friendly Societies cannot be relied on as a security, owing to "power of nomination."

Land Securities.—Land may be either real estate or personal property. Real estate includes—an estate in fee simple, where the owner has full power to deal with it in every way, and if he dies intestate it goes to his heirs; an estate in fee tail, commonly known as an entailed estate, which can now, in most cases, be made into an estate in fee simple by the owner in possession enrolling a disentailing deed in Chancery (if the owner in possession becomes bankrupt, his trustee has the like power); an estate for life; and copyhold or customary freehold property, these last two now being practically synonymous. All the above are freehold estates, and it is worthy of note that although there may be a yearly rent-charge upon the property, it is nevertheless freehold, though "freehold" is often wrongly used where it is intended to intimate that the land is free from rent charge, chief rent, or ground rent. Personal property includes land held for a term of years (leasehold) or held at the will of the owner (except copyhold land, at the will of the lord of the manor), or on sufferance, as, where a lease being ended, a tenant continues in possession.

Of estates in land, where there is more than one owner, there may be (*a*) owners in severalty, where each has full power to deal with his own share; (*b*) joint owners (joint tenants), where they must all unite in any dealings with the property, and on the death of

any one of them, his share falls to the survivors ; (*c*) coparceners, where the owners, being females, have *inherited* the property, all having equal interests in it, and on the death of one, her interest descends to her heirs ; here, too, all the owners must unite in any dealings with the property ; (*d*) tenants in common, where the owners are all interested in the same property, though in different proportions. In these cases, if there should be any dispute among the owners, it may be necessary to apply to the Court of Chancery for a partition order. They are, therefore, not at all desirable security for a banker, unless he obtains a legal mortgage, with power of sale, executed by all the interested parties.

Although landed property is popularly considered the perfection of security, a prudent banker will, as a rule, decline to advance upon it until the holder's title has been verified by the banker's own solicitor, and its value ascertained by an independent valuation.

In the first place, the person in possession of the deeds may only have a life interest in the property, in which case, unless the banker secures a life insurance policy, the death of the depositor will deprive him of his security and probably saddle him with a bad debt.

The deeds of title may refer to a large estate, but a considerable portion of it may have been sold by the owner, and as such sales are often not endorsed on the original deeds, the banker can only ascertain by enquiry the actual extent of the land which his customer may control. Or there may be an annuity or rent charge or marriage settlement, or even a mortgage upon the property, or it may be leased, and if the tenant has paid his rent in advance it cannot be collected again.—*Green* v. *Rheinberg*, October, 1911. It will, then, be readily seen how desirable it is that a duly qualified individual should examine the deeds, report upon the title of the holder, and indicate what he considers to be necessary to make the deposit a valid security. Even then a banker should endeavour to satisfy himself by personal enquiry as to the probability of the property being subject to any trust, for if any such existed prior to the deposit of the deeds with him, he would find himself compelled to part with the deeds without any compensation.

So strongly do the Courts maintain the legal title as opposed to the equitable charge, that where a mortgagee has parted with the title deeds of the property he holds as security, and through his negligence in allowing them to remain out of his hands, has left it in the power of the mortgagor to effect, in fraud, a new mortgage, they have decided that the negligent mortgagee retains his mortgage title to the property, unless it can be proved that he parted with the deeds in bad faith, and with the purpose of enabling the mortgagor to perpetrate a fraud. In such a case, therefore, the second person who has advanced money on the property, and has taken every precaution to secure his safety, is deprived of his security in favour of the negligent legal owner.—See Appendix.

By Act 56 and 57, Vic. C. 21, voluntary conveyances, if *bonâ fide*, can no longer be avoided under 27 Eliz, C. 4.

Deeds of property may become security to a banker by (*a*) legal mortgage, (*b*) simple deposit of the deeds as security without any verbal or written conditions, (*c*) deposit of deeds with a memorandum setting forth the terms upon which they are deposited. In case *a* or *c* the banker's title will be strictly limited by the words of the deed or agreement, which may, however, be varied from time to time by mutual agreement, but a deed can only be varied by a deed and an agreement in writing by a subsequent written agreement.

Under the Conveyancing Act, 1881, s. 25 (ii.), the Court has power to order a sale in lieu of foreclosure at the request of an equitable mortgagee by deposit, although there was no agreement to execute a legal mortgage nor any memorandum of the charge.

Mortgages.—If a legal mortgage is taken, it should contain a general undertaking to pay the advance, a power to sell the property in case of default of repayment, covenants to insure premises and fixtures, and to apply proceeds, in case of fire, in repairing and replacing the destroyed property, and such other conditions as the case may seem to require. If it is to be held as security for a current account, that fact should be stated, and it should be declared to be a continuing security. Under some circumstances it may be advantageous to make a special mortgage loan account, and provide

that payments to the credit of the general account are not to be taken in repayment and reduction of the mortgage; but in that case, if once the loan, or a portion of the loan, be repaid, the security is not valid for a renewal of the portion of the loan repaid; and the banker cannot charge compound interest on the advance.

If, whilst the banker holds the deeds, either under a legal or under an equitable mortgage, he receives notice that his customer has created a second charge upon the property, he should stop all further transactions upon his customer's account, and consult his lawyer as to his position, or, as before explained, he may find the old secured debt has been paid off, and a new unsecured advance has been created. If, after receiving notice of a second charge, the balance due to the banker has been repaid, he must have the second mortgagee's consent before he surrenders the securities to the mortgagor. (See *Deeley* v. *Lloyd's Bank*, 1909, *re* "Clayton's Rule.")

If the property mortgaged is situate in Middlesex or Yorkshire, the mortgage should be enrolled at the district registry.

If a mortgage is intended to cover trade machinery or growing crops, it must be registered as a bill of sale, within seven days from the date of its execution. But a decision in 1888 declares that everything attached to the freehold (even trade machinery) is covered by a mortgage *which does not specifically refer to the machinery*, without registration as a bill of sale. (*Batchelder* v. *Yates*. Law Reports, June, 1888, Chancery Division.)

An equitable mortgage may be given by deposit of deeds either with or without a memorandum, or by a written order to the person who holds the title deeds, to deposit them with the lender, and an equitable mortgagee can compel a legal mortgage to be given, even if he has no memorandum of deposit. It is true that an equitable mortgage is postponed to a legal one, provided the legal holder has no notice of the existence of the equitable charge; but if the equitable claimant keeps the title deeds in his own possession, there is little danger of a legal charge being effected. If, then, deeds are lent, it should be upon the undertaking of a reputable solicitor that they shall be returned, without detriment to the banker's security. Equitable mortgages on property in Middlesex or Yorkshire can also be entered in the registers.

Although no written memorandum is required to create an equitable mortgage, yet it is generally an advantage to have one, though its preparation needs considerable legal acumen, as the rights of the holder will be read strictly according to its provisions. If the property belongs to several partners, all those whose names appear in the deed should sign the memorandum.

An agreement to execute a mortgage on demand creates, without demand, a valid equitable mortgage on the occurrence of the conditions for which it is given. An equitable mortgage comes under the Statute of Limitations.

Copyhold property affords little security by way of equitable mortgage. The usual method of creating a charge upon it is by surrendering it to the lord of the manor, for the use of the mortgagee, subject to the repayment of the money advanced, and usually the mortgagee does not claim admittance, though the surrender must be entered upon the Court Roll.

All mortgages and charges by limited companies should be entered on their register of mortgages; neglect of this formality does not affect the position of a mortgagee in good faith, but nearly all charges must be registered with the Registrar of Joint Stock Companies within 21 days from execution, or they will be valueless.

Second Mortgages.—These are a most unsatisfactory form of security. The holder of the first mortgage will not consider the interests of the second mortgagee, when he finds it desirable to realise his security; and by the legal processes of consolidation of mortgages, or of tacking, which we shall refer to hereafter, the holder of the second charge may be deprived of all his security. If, however, a second mortgage has to be taken, notice of the second charge should be given to the holder of the prior mortgage, and also to the Assurance Company, unless a separate policy is taken out for the second charge. The first mortgagee can add unpaid interest to his claim.

Leasehold.—Leasehold property is that which is leased to the lessee for a definite period of time, but not "for life," which is a freehold estate. It may be for only a few years or for a considerable

period. The provisions often inserted in leases make them an uncertain security, and every lease should be carefully examined to see the conditions as to the uses which may be made of the property, as to repairs, insurances, underleases, the payments of taxes, rates, and assessments (which should be very precisely defined), and particularly as to the defaults and offences which forfeit the lease, among which, it may be noted, that often it is provided in short leases, that the bankruptcy of the lessee makes void the lease.

If a lease is taken as a legal security, the usual plan is not to take an assignment for the full unexpired term of the lease, because this renders the assignee liable for all the original covenants, but rather to take a sub-lease, if allowable, for a shorter period, if only one day shorter than the original lease. This plan relieves the sub-lessee from all the liabilities on the original covenant, unless he enters into possession; though, on the other hand, he is at the mercy of the original lessee, whose defaults may deprive the sub-lease of any value whatever.

If only an equitable deposit is taken of a lease, the banker cannot be compelled to accept a legal assignment of the leasehold, but if he enters into possession of the property he is liable on the covenants of the original lease, while he holds possession.

Mortgage Deeds, deposited as security. If a customer deposits with his banker deeds of property upon which he, the customer, holds a mortgage, the banker should have an acknowledgment from the mortgagor that the full amount stated in the deed is still owing, and he should serve him with a notice of his lien, and a warning not to pay anything in reduction of the mortgage, except to the bank. The receipt of this notice should be acknowledged by the mortgagor. If a mortgage deed is assigned to the banker by way of charge, and not absolutely, he cannot sue upon it in his own name. If an equitable mortgage, held by a customer, is deposited with a banker (an equitable mortgage of an equitable mortgage), it is not essential that he should hold the memorandum of deposit given by the person who owns the property, though, of course, it is very desirable that he should do so.

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Equity of Redemption.—However many charges a man may give upon his property, there is still reserved to him the right to redeem it on the repayment of these charges. This right is called his "Equity of Redemption." If he parts with this he surrenders all future claim to his property. As a security, its value is most uncertain, being dependent upon the amount of the charges on, as compared with the value of, the property, and also upon the powers of consolidation that may be in existence.

Consolidation of Mortgages.—This is an old regulation, now abolished, as far as relates to mortgages created since 31st December, 1881, unless specifically granted. Its effect is this: A mortgages estate X to B and estate Y to C (or direct to B). B takes a transfer of C's mortgage to himself, and so holds the mortgages on both properties. A makes default in connection with mortgage X, afterwards he proposes to repay mortgage Y, and retake possession of that property. B can decline to part with estate Y, unless the mortgage X is also repaid. That is to say, he can take any surplus in value of the one estate to contribute to the deficiency in the other.

Tacking.—This somewhat unjust provision was abolished in 1874, but restored in 1876. Its effect is this: A holds a first mortgage on some property; he is said to have the legal estate vested in him; B has a second mortgage on the same property; and C, without knowledge at the time of B's mortgage, takes a third mortgage on the same property. If C obtains an assignment of A's mortgage, he secures the legal estate, and can add the amount of his third mortgage to that of the first mortgage. The total of these becomes a first charge on the property, and B is left out in the cold, or, at any rate, is put in a much worse position than he supposed himself to be. In the same way, if the first mortgage provides for further advances, unless the second mortgagee gives notice to the first of his charge, the additional advances made by the original mortgagee can be tacked to his original first mortgage. Tacking is not now permitted in Yorkshire in transactions after 1st January, 1885. (Yorkshire Registries Act, 1884.)

Finally, it may be suggested that unless the banker has the legal estate vested in him, with power of sale, he should not enter into any contract for the disposal of the security he holds from an insolvent customer, without the consent of the legal representative of the estate, and even if he has the power to convey the property, he may incur liabilities to the estate, if he does not take the precaution of conferring with the trustee.

Valuations.—Having satisfied himself as to the title of his customer to the securities he offers, the banker's next business will be to ascertain their value.

The best plan, where possible, is to construct a plan of the area as described in the deed, so as to realise the exact position of the land, and then, by personal inspection, to see what actually stands upon the land. Through neglect of this precaution the lender sometimes does not discover until too late that the buildings which he has looked upon as his security are, unfortunately for him, erected upon land over which he has no control. The site having been verified, it is then necessary to ascertain whether the property still belongs to the holder of the deeds, and what is the actual rent received from the property. From the gross rental, deductions may have to be made for ground rent or chief rent, land tax, tithe rent, or other imposts falling on the landlord, for insurance, house repairs, casualties (as empty houses). If the property is short leasehold, the present value of the net rental for the unexpired term of the lease must be estimated.

The valuation will also be affected by the character of the ground rent, if any. It may be an original rent charged upon the property, or it may be an apportioned rent, as where an estate is bought, subject to a ground rent of £80 per annum, and resold in five plots, subject to a ground rent of £20 each. In this case, if default is made in payment of the original rent, the person entitled to it may recover the full amount from any one of the plots, and leave the owner of that plot to obtain his remedy from the sub-lessor or his neighbours. In an apportioned rent, then, it is of importance to know how the other portions are secured. It is sometimes desirable to see the receipts, showing that the ground rent last

accrued due has been actually paid. In estimating the value of house property, it is also necessary to consider the distance from a town, railway, main road, shops, schools, &c., &c., the class of neighbours, the probable alteration or conversion to other purposes of adjacent property, the present or prospective nuisances in the neighbourhood, the style and age of the property, its aspect, the accommodation, the water supply and drainage, its construction and state of repair, and whether damp, the nature of the soil and subsoil, &c., &c. If cottage property, the probability of the employment of tenants proving permanent, is a matter for consideration. It is also necessary to ascertain whether all paving, draining, or other local requirements have been executed, and paid for, or are a contingent liability on the property. The insurance must also be looked to, as to amount, and date when premiums fall due, so that the renewal receipts may be inspected. Much valuable information on this subject will be found in Tarbuck's "Handbook of House Property."

In the case of shops and warehouses, the policies should be examined to see how much of the insurance is on the freehold and fixtures, and how much on stock. If the policy is in the name of the customer, in case of fire notice may be given to the company of the banker's lien if it be not noted in the policy.

In the case of uncovered land, its value may depend on its adaptability and availability as building land, in which case many of the considerations affecting the value of houses will affect it, or its value may depend on its agricultural worth, which will be affected by its proximity to a town and by convenient railway or cana. facilities.

Ground Rents are sometimes offered as security, and it will be well to ascertain by personal inspection of the land in what manner they are secured, as the rent may easily be created by a deed, which adds nothing to the intrinsic value of the land, if no buildings are erected upon it.

Works, Mines, &c.—The valuation of works and mines requires the skill of an expert. The following points need consideration: Tenure.—Is the rent or royalty a fair one, or has it been fixed in

inflated times? If a lease, does it allow for fair wear and tear, or are the repairing clauses stringent? Situation.—Does it present natural advantages? What are the conveniences for conveyance? Is labour obtainable readily? Permanency of employment.—Are the works dependent on certain natural supplies of limited extent, and not replaceable, or on fluctuations in fashions? Possibility of process being superseded by new inventions. Special risks from situation (as from floods) or from manufacture (as extra hazardous fire risks). Depreciation.—Has it been freely charged? Have repairs been thoroughly attended to? Have renewals been charged to capital, or has revenue borne a full share of their cost? Adaptability of buildings for economical working by size and arrangement. Intrinsic value of site. Rental value.—What are gross rents? Do they include charge for machines and turning? If so, is depreciation regularly charged, and at what rate? Matheson on the "Depreciation of Factories" is a valuable work on this subject.

If the banker wishes to consider the possibility of his customers working profitably, he may, in addition, consider the ability of their management, the amount of mortgages or loans, and on what terms as to interest, recall, and repayment, the relation the capital bears to the out-turn, and the adequacy of their resources to the extent of their business.

Fire Losses.—It may be remarked that in England there is a diversity of practice in dealing with fire losses on land as compared with those at sea. If goods valued at £10,000 are insured for £8,000, and are damaged to the extent of £8,000 (*i.e.*, "partial loss"), under a marine policy only eighth-tenths of £8,000 would be paid by the underwriters, but in an inland policy the whole £8,000 would be paid, according to the custom of English offices. The foreign custom is that adopted here in marine policies, therefore policies issued by foreign companies should be carefully examined with reference to this point.—See Appendix.

Goods as Security.—If a banker secures actual possession of the goods themselves, subject to the following conditions, he has good security, and so if he secures the documents of title to such goods; but care must be taken to distinguish between documents giving a title and those simply authorising a transfer of the goods.

It is now decided that where actual possession of the goods or of a document of *title* is given, no registration under the Bills of Sale Act is required.

Bills of lading, dock and warehouse *warrants*, if endorsed by the nominee, pass a complete title to goods; but delivery orders, warehouse certificates, and documents of a similar character do not give a complete title until either the goods they refer to are actually obtained possession of, or are registered in the name of the claimant. Not only is the real owner of the goods able to pledge them, but any agent, in possession of goods or of documents or transfers of title thereto, in the ordinary way of his business for sale, may also pledge them, even in fraud of his principal, if the person who makes advances upon them acts *bonâ fide*, and has no knowledge of any fraudulent intent on the part of the agent. Such pledges, however, are only valid for loans made *after* the goods or the documents appertaining thereto are actually in the possession or under the control of the agent. If pledged for preceding advances, the agent can only pledge the goods to the extent of his own interest in them. A forwarding agent, or one who in the usual way of business simply handles the goods, but does not deal in them, cannot give a title by way of pledge.

Bills of Lading, when endorsed, convey an absolute title to the goods, subject to the claims of the shipowner for freight, etc., and to dock dues and duties. Usually, they are issued in duplicate or triplicate; the number in the set is stated on the face of each one, though often they are not marked "first" "second," &c. It is desirable, to perfect the security, that the whole set should be obtained, and they should indicate that the goods are deliverable to order of the shipper or to his assignee. In some trades the mate's receipt is required in addition to the bill of lading, because, although not a valid security in itself, it binds the shipowner to account for the full amount of goods specified, whereas if the bill of lading is signed for more than is actually taken on board, the ship owner is not liable for the excess above the actual shipment, though he has the onus of proving that he has delivered the same quantity that he received. It is desirable to carefully inspect the bill of

lading, as conditions are sometimes inserted vitiating its value as a security. The "ship's copy" is quite valueless.

It is needless to say that the intrinsic value of a bill of lading is dependent upon the honesty of the shipper; the captain or agent simply certifies the number or weight of the packages, and undertakes no responsibility for their contents or the quality thereof.

If a banker is instructed to accept drafts against production of bills of lading, and these latter turn out to be forged, he can, nevertheless, require his customer to indemnify him for the payment of the drafts he has accepted.

Bills of lading should be accompanied by insurance policies or certificates of insurance. If these are payable in the United Kingdom, they must be stamped within ten days after arrival in this country, unless they refer to an open policy already stamped. If the insurance is declared under an open policy, the banker should obtain the insurance companies' confirmation of the appropriation, which should fully cover the value of the goods; the description of the goods in the policy, numbers, weights, and marks must agree with the bill of lading, and all special conditions should be inserted.

Bills of Sale.—Where goods and chattels are in the apparent possession of an individual, if it is desired to obtain a security over them, a bill of sale must be taken and registered within seven days from its date, and if the loan continues, re-registration must be effected every five years. Marriage settlements, made before marriage, do not, however, require registration. If a bill of sale is made voluntarily, *i.e.*, not for valuable consideration, it is void if the maker becomes bankrupt within two years from its date, and if he fails within ten years, the claimants under it must prove that, exclusive of the property it comprises, the maker was solvent at the time he made it. A bill of sale is not valid if given by a bankrupt or to a person who knows that the maker has committed an act of bankruptcy within three months of its date, or if it is within itself an act of bankruptcy, or so far as it relates to goods in his possession when he committed the act on which he is adjudicated a bankrupt, or if given by way of fraudulent preference. It cannot cover all, or practically all, the bankrupt's property to secure a debt

previously incurred, but if it embodies a distinct undertaking to make further substantial advances to *bonâ fide* assist the maker to continue his business, it may cover a past debt as well as present advances. A bill of sale may even assign *future* book debts.

A memorandum by way of equitable sub-mortgage of a registered bill of sale, accompanied by deposit of the registered bill of sale and transfer, does not require registration.

The appearance of a customer's name in the bills of sale list, as maker, is an omen of coming disaster which a banker will not fail to give heed to.

Stoppage in Transitu.—This is a right which the vendor of goods possesses to stop delivery of them to his purchaser at any time before they are given into the purchasers' control. Thus, A, in India, sends a cargo of wheat to B, in London; he sends the bill of lading direct to B. Before the cargo is delivered to B, A hears that he (B) is not solvent, thereupon he instructs the carrier of the goods not to deliver them to B, and gives notice to B that he is not empowered to deal with the bill of lading or the goods. This is his right of stoppage in transitu, and unless B has parted with the bill of lading or other document of title, for valuable consideration, the goods will remain the property of A. It must be noted that a *bonâ fide* holder for value of the documents for title cannot be deprived of his right to the goods by this power, even if he has taken them after B's authority was withdrawn, but with no knowledge of that withdrawal.

It seems imperative that the notice to stop the goods should be given to the carrier or his agent. It is not enough to give it only to the consignee.

Mortgages of Ships.—These must be effected on a prescribed form, and registered at the Port of Registry. The first mortgagee on the register has the best title, irrespective of the date of his mortgage, and registration must be effected before bankruptcy to be good against the trustee of the estate. For a fee of one shilling the register of any ship can be searched, when it will be seen whether any

charge is entered against it or against the shares held by any of the joint owners. For purposes of registry, a ship is divided always into 64 equal shares, neither more nor less. If the mortgage is to cover the whole of the ship, it should specify boats, coals, ballast, stores, freight, &c., &c.

There are many maritime liens which have a preference to the ordinary mortgage of the ship, and wherever a mortgage is taken it should be supported by a marine insurance policy.

Dock and Warehouse Warrants.—These, when endorsed, carry, like bills of lading, the legal title to the goods referred to, without any notice to the issuers, but their value as a security is dependent upon the probity of the consignor of the goods and of the warehouse-keeper. Warehouse-keepers, dock-keepers, wharfingers, packers, calico printers, &c., have a lien upon goods in their hands, not only for their charges on those particular goods, but for all ordinary debts due to them from the person for whose account they are placed in their hands. They cannot sell the goods, but they are entitled to retain them until their claim is satisfied. Where warrants are issued as documents of absolute title, this general lien is extinguished, and rent can only be charged from the date of the warrant, unless it is otherwise stated on the document.

If goods are dutiable and warehoused in bond, the duty must not be overlooked in estimating their value. As previously remarked, to secure a legal title to goods represented only by a certificate or delivery order, or other simple authority to claim them, as distinguished from warrants or bills of lading, the goods must be transferred into the name of the mortgagee.

Assignments of Debts.—A debtor, A, may assign to his creditor, B, any debts owing to him by C, and upon the debtor's debtor, C, receiving notice of the assignment, he is bound to pay the debt to the assignee, B, who takes exactly the same rights as the assignor, A, had. If the debtor C had the right of set off against A, he is not deprived of that relief by the assignment. It is desirable that the assignment should be in writing; care must be taken that it is not

in itself an act of bankruptcy, and notice of it should be given as soon as possible to the person to whom it is addressed, who will, of course, require to be satisfied that his creditor has actually assigned the debt. It is well to be in a position to prove the sending of notice, in case the debtor declines to acknowledge receipt of it, for if there is more than one assignment, the one of which notice is first given has a prior claim on the funds assigned. The debtor is not bound, when he receives notice, to give any information as to any earlier assignment of which he may have been informed, or of any prior charge in his own favour. Assignments can be made to cover future debts.* Assignment of book debts by limited companies must be registered in the Registry of Joint Stock Companies.

The security must be an absolute assignment of the debt due to the assignor, or of a portion of it, and the assignee has full power to give a good discharge of the debt, to the extent of his assignment, although the instrument from which he derives his title makes no special provisions of that character. It must not be merely an order to pay, but it must specify the fund or debt out of which it is to be paid.—Notice *Wigram* v. *Buckley*, 1894.

A landlord may direct his tenant to pay his rent to the landlord's creditor, until the order is countermanded by the creditor, and this gives the creditor the right to sue the tenant for the rent.

Warrants of Attorney, Cognovits, Judges' Orders.—These are termed judgment securities. They must be registered, like bills of sale, within seven days of their completion; they remain in force for twelve years, and execution can be issued at any time within six years from the date of the judgment without any further authority being required; they do not make the holder a preference creditor in case of bankruptcy, unless he has realised his security before notice of an act of bankruptcy. They entitle the holder to obtain a garnishee order on debts due to the defendant, or a charging order upon any stocks or shares he may own, subject, however, to any prior charge that may be in existence.

* But see Bankruptcy Act, 1914. See p. 43.

A Warrant of Attorney is a written authority, given by a debtor to a solicitor named by his creditor, authorising him to represent the debtor in an action, and to allow judgment to be given against him. It must be witnessed by a solicitor, who has explained the effect of it to the debtor.

A Cognovit, fully styled a *Cognovit Actionem*. When an action has been commenced against a debtor, he may, in consideration of time being granted to him, or on any other grounds, execute a cognovit acknowledging his liability, and undertaking not to obstruct his creditor in obtaining judgment against him.

Judges' Orders.—Where both parties to an action for recovery of a debt agree, a judge may make an order to stay proceedings, with a proviso that if the debt and costs are not paid within a certain time, judgment may be entered up, and an execution levied upon the debtor's goods.

Garnishee Order (*i.e.*, a warning order).—Where a creditor has obtained judgment against his debtor, if he can discover anyone owing money to his debtor, or any company in which his debtor holds shares, he may further obtain a garnishee order, warning the person indebted to, or the company whose shares belong to, his debtor, that he, the creditor, has a charge upon the debt or shares, subject, however, to any prior lien, legal or equitable, that may be in existence. A garnishee order is good in bankruptcy only if payment of the debt or realisation of the shares is effected before notice of bankruptcy. If a person is served with a garnishee order after he has given his creditor a cheque, but before it is cashed, it is no duty of his to stop payment of the cheque.

It is doubtful whether money subject to notice for repayment can be attached by a garnishee order.—(*Cowley* v. *Taylor*, 1908.)

A valuable article on "Garnishee Proceedings" will be found in the *Law Times*, 15th August, 1896, p. 367.

On receipt of a garnishee order, a banker should advise his customer of its receipt, and pay no more cheques—even if the balance of the account considerably exceeds the amount of the judgment.

Writ of Elegit.—Where a creditor has obtained judgment, and finds that his debtor is possessed of lands, he may elect to have this land delivered to him in pursuance of such judgment, and he can obtain an order for the sale of the land from the Court of Chancery.

Bankers' Books Evidence Act, 1879.—By this Act, a copy of the entries in a banker's books may be produced in lieu of the books themselves. (See *Law Times*, 17th October, 1908, *Rex* v. *Kinghorn*.)

It was recently held that this Act was passed for the relief of bankers and not to provide litigants with the means of instituting enquiries into banking accounts.

APPENDIX.

Additional Regulations of the Bank of England Respecting Stocks.

Probates, &c., should be left by hand. The bank will return them by registered post if requested.

Proof of Death.—Where none of the specified certificates are attainable—if the deceased died within the United Kingdom—the bank requires three statutory declarations. 1. By some responsible person who saw deceased after death. 2. By some other person present at the funeral.—These must set forth the late residence of deceased, date of death, and date and place of burial. 3. By the minister at the place of burial, declaring either that no register of burials is kept, or that deceased's burial is not entered therein. If deceased died in India, the Colonies, or Dependencies, in place of No. 3, a declaration by some official to the effect that there is no registration of deaths or burials, or that there is no record of deceased's death or burial, is required.

Declarations may be made in the United Kingdom before a Justice of the Peace (who must state his county), a Notary-Public, or a Commissioner to administer oaths in the Supreme Court; in the Colonies, &c., before the Governor, Lieutenant-Governor, or a Notary-Public, or before any official duly qualified to administer oaths in the Colony, whose signature is authenticated by the Governor, the Lieutenant-Governor, or a Notary. Notaries must attach seal. In foreign countries they should be made before a British Consul, Vice-Consul, or other competent British Authority,

or before a duly-qualified Foreign Official, authenticated by a competent British Authority. Consuls and Vice-Consuls must attach their seals.

Cumulative Investments.—The Dividends on Consols, and most other Imperial Stocks, Transvaal, Indian Government, Metropolitan, London County, and London Corporation 2½ Stocks, will be invested in like stock by the bank, until the amount of stock reaches £1,000, at a charge of one penny for each pound invested. This can be done even where the stock stands in the name of a minor, at the request of the parent, guardian, or next friend. Proof of date of birth of any minor must be lodged at the bank. Orders for investment of dividends become void when the minor comes of age or the bank has notice of death of stockholder (minor or adult). A stockholder may have any number of accounts.

Forms can be obtained at most Money Order Offices or on application at the bank.

Dividends unclaimed for ten years are handed over to the National Debt Commissioners, but are repaid without interest upon proof of title.

On registration of the transfer a register certificate in the name(s) of the transferee(s) will be issued. When the deed of transfer relates to part only of the stock held by the transferor(s) a register certificate will be issued for the balance of the stock.

Holders of stock for the time being registered as stock transferable by deed may demand that their stock, or part thereof, shall cease to be transferable by deed and become transferable in the Stock Transfer Books (*i.e.*, by the stockholder or his attorney attending in person at the bank, being identified by a stockbroker and executing a transfer in the books). The demand must be made in the prescribed form and be lodged at the bank with the register certificate. A certificate of inscription of the stock will be issued in due course : this document is of value as a memorandum only, the stockholder's title being the entry in the bank books. When the demand relates to part only of the stock, a register certificate will be issued for the balance of the stock.

Charges on Land.

Where the owner of deeds placed them under control of an agent who pledged them for a larger sum than his principal had authorised to a person acting *bonâ fide* and without notice of limitation, it was held that the owner could not redeem them without paying the full amount advanced. (*Brocklesby* v. *Temperance, &c., Building Society*—Court of Appeal No. 2, 27th June, 3rd July, 1893.)

Payment for Honour, p. 31.

If a bill, drawn on Liverpool payable in London, is protested for non-acceptance, it is not customary to protest in Liverpool on non-payment. The protest is made in London before presentation to acceptor for honour.

This is the custom, though we doubt its legality.

Debentures, p. 93.

The decisions affecting debentures are so intricate, that it is always desirable to obtain good legal advice in dealing with them.

Care should be taken to see that power to issue any prior charge is renounced, and it must not be forgotten that a company, whilst a going concern, has full power to deal with all its floating assets, even though its debentures may be a floating charge.

In *Nelson and Co.* v. *Faber and Co.*, Law Times Reports, 5th September, 1903, holders of third debentures retained the right of set-off for a debt for goods, against claims of first debentures.

Debentures issued by societies under the Industrial and Provident Societies Acts must, if they charge personal chattels, be registered as bills of sale. Those issued by companies under the Joint Stock Companies Acts must be registered with the Registrar of Joint Stock Companies.

In the Court of Appeal (January 11th, 12th, & 30th, 1897, *Lee* v. *The Roundwood Colliery Company*), it was decided that a distress made on the goods of a company before the commencement of a winding-up thereof, and before a receiver is effectively appointed,

is valid as against the debenture holders of the company, whose debentures create a floating charge on its goods and chattels.

A floating charge cannot cover any uncalled capital which by the company's articles is only callable in the event of winding up.

Fire Insurances, p. 103.

Although an insurer may value his property at, say, £10,000, and pay the premium to cover this amount for many years, he will find that, if his property is totally destroyed by fire, the insurance company will insist upon a valuation of the property as it stood immediately before the fire, with deductions for depreciation, &c., so that very probably he will get much less than he expected and insured for. This does not appear to be generally known, but enquiry will prove it to be the fact, unjust though it be.

Cheques, p. 4.

Sec. 17 of 46 and 47 Vic., c. 55, appears to legalise the objectionable form ordering payment of "the amount specified in annexed receipt when duly stamped, signed, and dated," but it does not render such a document a negotiable instrument; an important reservation, and the House of Lords has held that it is not a bill of exchange within the meaning of the Act. The banker should therefore have an indemnity from the drawer.

Domiciled Bills.

Sir Samuel Montagu, in a letter to the *Times* (Nov. 20th, 1901), pointed out that whilst in England and the United States of America the liability of an acceptor on a bill continues for six years, and in France and Belgium for five years, in Germany, Italy, Bulgaria, probably Roumania, and to a certain extent in Holland, if a merchant in one town accepts his bill payable in another town (or in another country), if the bill be not presented on the due date (and, if necessary, protested in due time) the claim against the acceptor on the bill as well as against the drawer and endorsers is

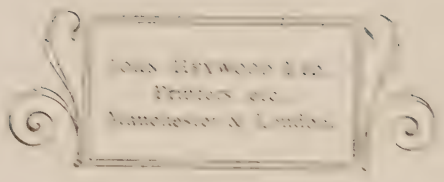
lost. There is, therefore, a serious risk in taking any domiciled bills which come under the law of those countries.

Joint Accounts.

When borrowers are not in partnership the death of one of them releases his estate from liability to repay, unless the loan was clearly made on their joint and *several* liability.

Lunatic Customers.

The Lunacy Act (Sec. 299, s.s. 2) provides that "a banker is authorised to hand over to a Relieving Officer of the Union or to the Treasurer or other officer of the Local Authority to which the lunatic is chargeable, any money or property belonging to the lunatic."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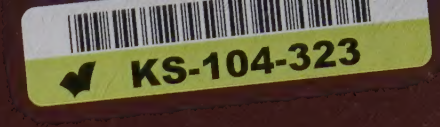
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